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A DIGEST

OF THE

LAW OF LANDLORD AND TENANT

IN THE PROVINCES SUBJECT TO

THE LIEUTENANT-GOVERNOR OF BENGAL,

BY

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OF THE INNER TEMPLE, BARRISTER-AT-LAW: AND OF HER MAJESTY'S BENGAL CIVIL SERVICE: DISTRICT AND SESSIONS JUDGE OF BURDWAN:

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PREFACE.

It was decided in April last that, as a preliminary step to a comprehensive revision of the Rent Law of Bengal, a Digest should be prepared of that law in its existing state. This work has now been completed, and is in the following pages submitted to the candid judgment of all who administer the law, who as advocates assist in administering it, or whose interests are affected by it.

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The *Digest* is intended to represent *the existing law exactly as it stands.* How far I have succeeded in carrying out this intention will depend upon the answers to the following questions—has anything been omitted—has anything been incorporated, which is obsolete or has been repealed—have the cases been fairly reproduced, and their results been on the whole correctly given—is the arrangement judicious and scientific—has anything been altered by re-arrangement, any principle been affected by being placed in a new juxtaposition? Those who take up this little volume, expecting to find the amendments of the law, which have the approval of the Commission, will be disappointed. They may or may not find something new to them: they will find a considerable amount of old and probably familiar matter put into a new shape: but they will find nothing in the nature of what, according to the particular aspect in which it is regarded, may be termed reform or innovation. To this there is, however, a kind of exception. The foot-notes contain a few observations intended rather as suggestions for consideration, than as expressing views considered and adopted. Even as suggestions, they have no higher authority than that of the Compiler.

The *Digest* is, in the next place, intended to reproduce *the whole of the existing law*—statute-law and case-law—connected with the subject of rent, or with the relation of landlord and tenant. A Table of Regulations and Acts incorporated in the work is prefixed and will enable the reader to see at once the exact scope of what has been done in respect of the statute-law. As regards the case-law no similar table was possible; but I trust that nothing of essential importance has been omitted—I have endeavoured to be as complete and accurate as possible, but that in this respect I have absolutely succeeded is more than I can venture to say for myself.

The statute-law has been reproduced *verbatim*, as a general rule, but to this rule there are a few exceptions. Where the language has received authoritative judicial construction, either by a Full Bench decision of the High Court or by a course of non-conflicting decisions, the language as thus settled has been substituted for the original language, which afforded room for doubt. The exigencies of arrangement have occasionally made it necessary to alter the form of expression when a portion of the law has had a new place assigned to it in a different distribution of the subject-matter. This was more frequently unavoidable in the Substantive part of the law than in the Adjective or Procedure portion. Finally, the work of uniting many *disjecta membra* into a congruous whole has required some little fitting in order to make the "joinings" smooth. In every case the original law and the cases are quoted on the margin, and any one who has the leisure and the inclination can easily satisfy himself as to whether the old material has been incorporated without being radically altered. The fact that the text of the old law has been generally retained except in these cases will be a sufficient apology if, in the opinion of any, the drafting appear deficient in uniformity or scientific expression.

As to those Articles or portions of Articles which are based wholly upon the case-law, I do not venture to expect that the

execution of this part of my task will give complete satisfaction to every one. I trust, however, that those who are disposed to criticise will not forget Mr. Austin's testimony about the difficulty of what he terms the *technical* part of legislation. If, in some instances, I appear to have gone beyond what the cases warrant, it will probably be admitted that in a work of this kind principles ought to be presented and not merely isolated applications of portions of them. When the decided cases do not contain the whole of a principle, I have therefore not hesitated to import the whole, if only the existence of the whole follows by necessary implication from the admitted existence of the portions found in the cases. Here also the authorities are given; and where there is a conflict of decision, attention is drawn to this by a brief note on the margin or a fuller reference in a foot-note.

When those questions of principle have been discussed and settled, in respect of which it may be found advisable to amend the existing law, the *Digest* may or may not supply the lines upon which the future Bill will be drawn. This will be a question for the consideration of the Commission. Criticism is, however, invited to the arrangement adopted in the Digest as to one possible arrangement of the subject.

If I have, as I hope I have, succeeded in collecting together in this little volume the whole of the Rent-law of these provinces, it may be that one result of my labour will be to show that the consolidation (or, if the term may be used, codification) of the Law of Landlord and Tenant in the Lower Provinces of Bengal is not such a very formidable undertaking as has been generally supposed. The consolidation or codification of the law or of any branch of the law is (and this cannot be too clearly understood) altogether different from the amendment or alteration of the law, though it is possible and indeed very common to effect both objects by a single measure. Consolidation does indeed necessitate some slight alterations or modifications

for the sake of congruity and uniformity. Many such will suggest themselves to the reader of the following pages as obvious and useful for the purpose of avoiding repetition of what is essentially the same matter, whilst it recurs with some shadow of difference. These alterations or modifications are, however, very different from radical alterations or amendments in matters of principle. Of this *latter* kind there are two questions which may be regarded as of pressing importance—namely, the question of making a right of occupancy transferable: and the question of a practicable rule of enhancement. If these two questions can be settled, there ought to be (I venture to think) no great difficulty in giving to landlords and tenants in Bengal a complete and self-contained rent-law. Even if the Digest be not instrumental in helping to bring about this result, it will at all events, it is hoped, be found useful as a compilation of that law in its existing state.

CALCUTTA,
The 8th July 1879.

C. D. F.

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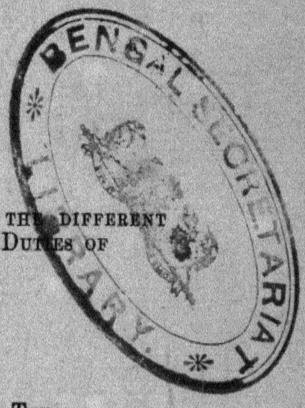

PART I.

OF THE RELATION OF LANDLORD AND TENANT: THE DIFFERENT KINDS OF TENANCY: AND THE RIGHTS AND DUTIES OF LANDLORDS AND TENANTS.

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A DIGEST

OF

THE LAW OF LANDLORD AND TENANT

IN THE PROVINCES SUBJECT TO

THE LIEUTENANT-GOVERNOR OF BENGAL.

PRELIMINARY.

ARTICLE 1.

In this Digest the following words and expressions are used in the following senses unless a different intention appears from the context.

Definition of Terms.

"Estate" means land included under one entry in the General Registers of Revenue-paying lands and Revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of every district.[1]

Estate.

"Proprietor" means a person who solely or jointly holds an estate or a share of an estate, and in the case of estates[2] belonging to Government includes the Government.[3]

Proprietor.

"Tenure" means a rent-paying interest in land immediately subordinate to that of a proprietor and superior to that of a ryot.

Tenure.

Illustrations.

(*a*) A *patni* interest is a tenure.

(*b*) An *ijarah* or farm for a term of years granted by a proprietor is a tenure.

"Tenure-holder" means a person who solely or jointly holds a tenure.

Tenure-holder.

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[1] For other definitions of "estate" see section 1, Act VII (B.C.) of 1868; section 1, Act IV (B.C.) of 1870; section 3, Act VI (B.C.) of 1873; section 3, Act VII (B.C.) of 1876; and section 4, Act VIII (B.C.) of 1876.

[2] Or say "khas estates."

[3] For other definitions of "proprietor" see section 1, Act VII (B.C.) of 1868; section 3, Act VI (B.C.) of 1873; section 3, Act VII (B.C.) of 1876; and section 4, Act VIII (B.C.) of 1876.

22 W. R. 327.

Taluk. "Taluk" imports a permanent interest in land.

Talukdar. "Talukdar" means the holder of a taluk.

Under-tenure. "Under-tenure" means a rent-paying interest in land subordinate to that of a tenure-holder and superior to that of a ryot. Where there are more such interests than one in the same land, the interest

Under-tenure of the first degree. immediately subordinate to that of the tenure-holder is termed an "under-tenure of the first degree;" the interest immediately subordinate to

Under-tenure of the second degree. the interest last-mentioned is termed an "under-tenure of the second degree;" the interest immediately subordinate to that last-mentioned

Under-tenure of the third degree. is termed an "under-tenure of the third degree;" and so on in order.[4]

Illustrations.

(*a*) A *dar-patni* interest is an under-tenure of the first degree.
(*b*) A *se-patni* interest is an under-tenure of the second degree.
(*c*) A *darijarah* is an under-tenure.

Undertenure-holder. "Undertenure-holder" means a person who solely or jointly holds an under-tenure.

Ryot. "Ryot" means the person in possession or occupation of land or originally let into the possession or occupation of land for the immediate purpose of cultivation.

Holding. "Holding" means the interest of a ryot in the land which is in his possession or occupation.

Under-ryot. "Under-ryot" means a person to whom a ryot has sublet his holding or a portion thereof.

Rent. "Rent" means whatever is periodically payable or deliverable[5] as a return or compensation for a tenure or under-tenure[a] or for the use or occupation of land or for any rights of pasturage, forest rights, fisheries, or the like.[b]

a 11 Moo. In. Ap. 433 : 9 B. L. R. 112.
b Act X of 1859, s. 23, cl. 4: Act VIII (B.C.) of 1869, s. 33 : 9 B. L. R. 123.

[4] In some parts of the Backergunge district there are many more than three degrees. The following gradations, complete or incomplete, may be found,—(1) Zemindari, (2) Talook, (3) Zimba Talook, (4) Shamilat Talook, (5) Ashat Talook, (6) Nim Ashat Talook, (7) Howla, (8) Ashat Howla, (9) Nim Ashat Howla, (10) Nim Howla, (11) Ashat Nim Howla, (12) Mirash Karsha, (13) Kaim Karsha, (14) Karshadar or ryot.

[5] The word "deliverable" is used, as it is used in the North-Western Provinces Rent Act, to meet the case of rent payable in kind. It is, however, worthy of remark that according to English law rent is something issuing out of the thing demised, but *differing from it in nature* and not part of the thing itself, for that would be not a *reservation*, but an exception. Thus a reservation to the owner of land of its vesture or herbage would not be good—see *Smith's Law of Landlord and Tenant*, 2nd. Ed. p. 115 and authorities there quoted.

Land. "Land" when applied to land cultivated or held by a ryot means[6] land used or to be used for agricultural or horticultural purposes.[c]

[c] 2 B. L. R. Appen. 39 : 9 B. L. R 97, 101, 121 : 2 W. R. Act X, 19 : 19 W. R 200 : 20 W. R. 341 : 1 Agra, F. B. 15 : 23 W. R 433.

Explanation : Bastoo or homestead land is land used for agricultural purposes when it is occupied by a ryot, if the rent of such *bastoo* land is payable to the same landlord under whom such ryot holds his cultivated land.

3 B. L. R. A. C. 283.

Illustrations.

(*a*) A lets to B an Indigo-Factory which includes land, buildings and the *sattas* or contracts by ryots for the growth and supply of indigo. The provisions of this Digest are inapplicable to the rent payable by B to A. Marsh 401.

(*b*) A, in consideration of an annual payment of Rs. 2,500, grants to B full liberty, license, power and authority to dig, search for, mine, get and work all iron and iron-stone which may be found in a considerable tract of country, and also by the same instrument demises to B five pieces of ground used for smelting and manufacturing iron. The provisions of this Digest do no apply to the recovery of this annual sum of Rs. 2,500. 1 Ind. Jur. N. S. 428.

Tenant. "Tenant" means a person liable to pay or deliver rent.

Landlord. "Landlord" means a person to whom a tenant is liable to pay or deliver rent.

Lease. "Lease" means a contract creating or continuing the relation of landlord and tenant and executed by the landlord in favour of the tenant.

Pottah. "Pottah" means a written lease granted to a ryot.

Kabuliyat. "Kabuliyat" means the counterpart of a lease or pottah, which counterpart is executed by the tenant in favour of his landlord.

Collectorate. "Collectorate" means the district to which a Collector is appointed and does not include lands situate beyond the local limits of such district, but forming part of an estate, the revenue of which is payable into the Treasury of the said district. Section 3, Act VI of 1853 : section 163, Act X of 1859.

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[6] It has been repeatedly decided, and it is now settled law, that the grounds-of-enhancement and the right-of-occupancy provisions contained in the present law have no application to land not used for agricultural or horticultural purposes. Though the broader point appears never to have been settled, it is understood that the general provisions of Acts X of 1859 and VIII (B C) of 1869 were intended to apply only (so far as concerns the actual occupant) to land used or originally let for these particular purposes. See in favour of this view 3 Agra Rep 52 : 8 W. R. 250 : 9 B. L. R. 105 *note*, 108 *note*, 109 *note*, 120 : 23 W. R. 61.

It has, however, been contended by some authorities that the provisions of these Acts as to the recovery of arrears of rent apply to the rent of any land, irrespective of the purpose for which it is used—See 9 B. L. R. 111, 116 note, 124 : 1 Ind. Jur. N. S. 428 : W. R. Sp. No. Jan.-July 1864 p. 78 (land used for a *hat*).

It has been held in several cases that Act X applies where rent is sought to be recovered merely for the land upon which houses stand—see Board's Rulings, 47 : 8 W. R. 90 : 2 W R. Act X, 9 · but otherwise where the claim includes the rent of the house as well as of the land, more especially if the former item be the more important—see Board's Rulings, 47 : 9 B. L. R. 109 *note*, 116 *note* : Marsh. 401.

Words importing the masculine gender shall be taken to include females.

Words in the singular shall include the plural and *vice versâ*.

Person. "Person" includes any company or association or body of individuals whether incorporated or not.

Year. Month. "Year" and "month" respectively mean a year and month reckoned according to the British Calendar.

ARTICLE 2.

Nothing in this Digest is intended to affect—

Saving of contract and custom, &c.

B.L.R.F.B. 326, per *Peacock C. J.* Act X of 1859, s. 7: W. R. special No. F.B.157.

(*a*) the obligation of any contract not inconsistent with its provisions or with any public right or public policy:

B.L.R.F.B. 326, per *Peacock C. J.*: 17 W.R. 306, per *Kemp, J.*: W.R. special No F.B. 156.

(*b*) any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.[7]

(*c*) the powers and duties of Settlement Officers, as by law defined and limited.

Act II (B.C.) of 1869. Act I (B.C.) of 1879.

(*d*) the provisions of "The Chota Nagpore Tenures' Act, 1869," or of "The Chota Nagpore Landlord and Tenant Procedure Act."[8]

Claims for house-rent or other rent are cognizable in the ordinary Civil Courts; and, where the amount claimed does not exceed Rs 500, by the Courts of Small Causes—see section 6, Act XI of 1865. Where Act VIII (B.C.) of 1869 is in force, the *forum* is the same as regards arrears of every kind of rent, but the question may be important with respect to the rule of limitation, which is to govern, and in other ways. See and consider the definition of "land" in Act V (B.C.) of 1867.

[7] In the Full Bench case quoted Sir Barnes Peacock said:—"That Act '(*i.e.* Act X)' did not take away the right of any ryot, who had a right by grant, contract, prescription, or other valid title to hold at a fixed rate of rent."

The constitution of the United States provides that *no State shall pass any law impairing the obligation of contracts*—see the meaning of this provision discussed in *Sedgwick's Treatise on the Construction of Statutory and Constitutional Law*, page 580 *et. seq.* One of the rules recently laid down by the Government of India as a guide in the work of Codification is that interference with contracts fairly made and usages long established is *primâ facie* undesirable.

As to the right of persons to waive by contract the advantage of a law made solely for the benefit of the individual and not infringing any public right or public policy, see *Maxwell on the Interpretation of Statutes*, page 348—*Cuilibet licet renuntiare juri pro se introducto.*

There are many agricultural customs in Bengal understood and acknowledged by landlords and tenants, who, however, from the impression that an Act of the Legislature takes the place of everything, or from some other cause fail to plead or prove them when they are material.

An interesting list of agricultural customs prevalent in the different counties of England will be found in *Woodfall*, page 709, and the following pages.

[8] It was resolved not to incorporate (*c*) and (*d*) in the Digest.

PART I.

OF THE RELATION OF LANDLORD AND TENANT; THE DIFFERENT KINDS OF TENANCY; AND THE RIGHTS AND DUTIES OF LANDLORDS AND TENANTS.

CHAPTER I.

OF THE RELATION OF LANDLORD AND TENANT.

ARTICLE 3.

Provisions apply only where relation of landlord and tenant exists.

THE provisions of this Digest apply properly to those cases only in which the relation of landlord and tenant subsists or has subsisted between the parties or their predecessors in interest[9] or those in whose place the parties stand.[1] When this relation is denied, the court must first decide whether it subsists or has subsisted in respect of the subject-matter of the suit, and according to its decision on this point must exercise jurisdiction or refuse to exercise jurisdiction therein.

2 Board's Rep. 92: 3 W. R. Act X, 3: 6 W. R. Act X, 56: 7 W. R. 2: 10 W. R. 407, 438: 8 B L. R. 180: 14 W. R. 85: 17 W R. 14: 2 C. L. R. 302. Marsh. 99.

SECTION I.—*Relation of Landlord and Tenant how created and proved.*

ARTICLE 4.

Relation of landlord and tenant created by contract, by acts of parties or by operation of law.

The relation of landlord and tenant subsists (1) where it has been created by a contract valid according to the law in force at the time of executing such contract: (2) where it is reasonably implied from the acts of the parties: and (3) where it has been created or continued by operation of law.[a]

[a] W. R. Jan.-July 1864, 275

[9] As in the case of an assignment or succession.

[1] As in the case of a purchaser at a sale for arrears of Government revenue, who is not the privy in estate of the defaulting proprietor (8 W. R. 62, 222).

Illustrations.

(*a*) A, an undertenure-holder, a Hindu and of the full age of sixteen years, granted to B, a ryot, a pottah of 20 *bigahs* of land at an annual rent of Rs. 15 before "The Indian Majority Act, 1875," came into force: and B executed a kabuliyat for such land at such rent in favour of A. The relation of landlord and tenant was created between A and B.

(*b*) A, a proprietor aged nineteen years and under the jurisdiction of the Court of Wards, granted a *patni* lease of 1,000 *bigahs* of land to B after "The Indian Majority Act, 1875," came into force. The relation of landlord and tenant was not created between A and B, for A was incapable of entering into a contract, regard being had to section 3 of "The Indian Majority Act, 1875," and section 11 of "The Indian Contract Act, 1872."[2]

2 Board's Rep. 102: W. R. Jan.-July 1864, p. 82 (Act X): Woodfall, 201: Smith, 24-29.

(*c*) B, a ryot, without any express contract of letting occupies 10 *bighas* of land within A's *patni* tenure and pays rent to A for several years at the rate customary in the village. The relation of landlord and tenant has been created between A. and B.

6 W. R Act X, 107: 8 B. L R. Appen. 86, 87, 90: 17 W. R 363.

(*d*) A, a proprietor, sues B for the resumption of 30 *bigahs* of land held by B as lakheraj under a grant bearing a date subsequent to the 1st December 1790. It is decided that the grant is invalid and that the 30 *bigahs* of land are *mâl* land of A's estate. A in consequence obtains a decree for resumption. The relation of landlord and tenant is created between A and B by this decree in respect of the 30 *bigahs* of land.

ARTICLE **5.**

Contract creating relation of landlord and tenant need not be in writing.

It is not necessary to the validity of a contract creating the relation of landlord and tenant that such contract should be in writing[3]; but, where such contract has been reduced to writing, registration is necessary to its validity in any case in which registration is required by any Act in force at the time of its execution.

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[2] Such is the effect of "The Indian Contract Act," under which contracts made by minors are absolutely void, not voidable merely. Under English law a lease made by a minor lessor is voidable by him on his coming of age, but not before, or by his heir if he die under age: it cannot be avoided by the lessee (Woodfall, 35: Smith, 61, 62). So a lease to a minor lessee (unless it be for *necessary* lodging) may be avoided by him within a reasonable time after coming of age, but is not absolutely void (Woodfall, 64: Smith, 69-71: Fawcett, 5). Consider whether as regards ryots' leases any change in the law is desirable.

[3] Writing has never been necessary for any class of contracts in India. The Legislature has of late years made a few exceptions to this general rule, but the Contract Act repealed several enactments which required writing.

The necessity of having contracts of tenancy in writing early impressed itself upon the people of England. The first section of the Statute of Frauds (29 Car II. C. 3) enacted that all leases made by parol, and not put in writing and signed by the parties making the same or their agents thereunto lawfully authorized by *writing*, should have the force and effect of leases at will only. The result of this enactment was that written leases became the rule: and the doubts, difficulties and controversies, which have beset the relation of landlord and tenant in these provinces, never had any existence in England The Government was at the time of the Permanent Settlement strongly impressed with the expediency of having these contracts in writing; and the old Regulations contain many directions to this end. But in consequence of the unwillingness of both parties (for reasons which I have elsewhere described—*Edition of Regulations* p 39 *note*) and of these directions

ARTICLE **6.**

Person having a limited interest may not grant lease valid for anything in excess of his own interest.

No person having a limited interest in land is competent to grant a lease which shall be valid for any purpose or period in excess of his own interest. A lease of the lessor's interest and of something in excess thereof is void as to the excess merely and is valid to the extent of the lessor's interest.

Reg. XVIII of 1812, s. 2. 22 W. R., 274: 10 W. R., 408: 13 W. R, 291. Marsh. 166: Woodfall, 1: 1 N. W. P. Rep. 103. 20 W. R. 291: 1 N. W. P. Rep. 165: Evidence Act, s. 115.

Proviso.

Provided that, if the lessor acquire such excess after the execution of the lease, such lease is valid as against him for such excess also.[4]

ARTICLE **7.**

Notwithstanding anything contained in the previous Article the following leases are valid:—

Certain leases by Court of Wards.

1—a lease or farm for a term exceeding ten years or beyond the period of expiration of the ward's minority, given by the Court of Wards under the sanction of the Board of Revenue.

Act IV (B.C.) of 1870, s 9.

2—a lease given without such sanction by the Court of Wards or by the Collector acting for the Court or by the manager appointed by the Court for a term not exceeding ten years nor beyond the period of expiration of the ward's minority: provided that any such lease shall become null and void on the removal of the ward's estate from the superintendence of the Court of Wards for any cause whatever.[5]

Act IV (B.C.) of 1870, s. 9.

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not being enforced by any sanction, written contracts of tenancy have never become usual. From the papers received from Behar it appears that both zemindars and ryots would now gladly have written leases; and many officers of authority and experience recommend their compulsory introduction by enacting that without a written lease no landlord should be allowed to sue, and no ryot to defend. The expense and delay of writing and registration might be immensely reduced by having statutory forms containing all essential particulars in the briefest form. If for the existing *zemindari* rent-roll kept on loose slips of paper, there were substituted a proper Register with suitable columns, a copy of, or extract from this Register might be made to serve all purposes of a *pottah*.

Although writing is not required by law, it is usual in the case of *patni*, *dar-patni* and other similar leases.

[4] The same principle applies under English Law when a person grants a lease of land in which he has at the time *no legal interest*. If he afterwards purchase or otherwise acquire a legal interest, he is estopped from denying the lease—see *Smith* 37, and *Fawcett* 42, and cases there cited. I have not been able to find an Indian case directly in point and have not therefore put this in the text. Consider however the effect of section 115 of the Evidence Act. Consider also the difference between a case in which the lessor by *suggestio falsi* or *suppressio veri* misleads the lessee, and a case (which often occurs in India) when both lessor and lessee are aware of the lessor's want of title, and the lease is intended as a fraud on a third person.

Act XXXV of 1858, section 14.

3—leases for a period exceeding five years made with an order of the Civil Court previously obtained and leases for a period not exceeding five years[6] made with or without such an order by the manager of the estate of a lunatic.

Leases by managers of Lunatics' estates.

Act XL of 1858, section 18.

4—leases for a period exceeding five years, made with an order of the Civil Court previously obtained, and leases for a period not exceeding five years[6] made with or without such an order by the manager of the estate of a minor.

Leases by managers of Minors' estates.

Act V of 1859, s. 1, proviso.

5—leases of ghatwali lands in the district of Birbhum for periods extending beyond the lifetime or incumbency of the grantors and granted for the working of mines or for the clearing of jungle or for the erection of dwelling-houses or manufactories, or for tanks, canals and similar works, subject to this condition that every such lease be approved by the Commissioner of the Division by an endorsement on the lease under his signature.[7]

Improving leases granted by the Birbhum Ghatwals and approved by the Commissioner.

ARTICLE 8.

Relation of landlord and tenant how provable.

The relation of landlord and tenant may be proved, (1) when such relation has been created by contract, by proof of such contract; (2) by proof of facts or circumstances from which such relation may reasonably be inferred.[8]

24 W. R 425.

Illustrations.

(*a*) A, a tenure-holder, sues B a ryot for a kabuliyat. B pleads that the relation of landlord and tenant does not exist between himself and A, who cannot therefore be entitled to a kabuliyat from him. A proves that B has for several years made him payments on account of rent, and on one occasion made no objection when A distrained and had his crops sold for the recovery

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[6] This (1 and 2) seems to be the effect of the section (9 of Act IV (B.C.) of 1870). There may be some doubt as to whether "lease," "leases" mean farming leases merely, as a mode of management, or include other leases such as *patni* leases, agricultural leases, &c., &c.

[6] By necessary implication.

[7] It was not possible to make these five cases *exceptions* to the preceding Article, as the lessors in cases 1, 2, 3 and 4 cannot be said to have an *interest* in the property.

[8] This of course does not interfere with the rule of evidence, which requires the production of the writing where there is one, to prove the *terms* of the tenancy—see the case above quoted and section 91 of the Evidence Act In *Augustien* vs. *Challis* (1 Exch. 280) Baron Alderson said:—"You may prove by parol the relation of landlord and tenant, but without the lease you cannot tell whether any rent was due."

of a certain amount of rent alleged by A to be due for the land occupied by B. The Court may infer the existence of the relation of landlord and tenant between A and B.

(*b*) A sues B for the rent of seven bigahs of land for the years 1281, 1282 and 1283, B.E. at the annual rent of ten rupees. B admits that he holds the seven bigahs of land, and that the annual rent is ten rupees, but he alleges that no relation of landlord and tenant exists between A and him, and that his rent is payable to C. A, in the course of his examination as a witness, says that B executed a kabuliyat in his favour some years before, but that he cannot tell what has become of it. No legally admissible secondary evidence of the contents of the kabuliyat is offered ; but A shows by satisfactory evidence that B has been in the habit of paying him the rent of the seven bigahs of land. The Court may find the relation of landlord and tenant proved.

(*c*) A sues B for the rent of seven bigahs of land for the years 1281, 1282 and 1283, B.E. at the annual rent of ten rupees. B alleges that the annual rent is seven rupees only. A admits that B executed a kabuliyat in his favour for ten years from 1275 B.E. This kabuliyat must be produced or legally admissible secondary evidence of its contents must be given, failing which, A can have a decree at the rate only admitted by B.

SECTION II.—*Of Changes of Parties to the Relation of Landlord and Tenant, not affecting the Continuance of such Relation.*

ARTICLE 9.

In what cases relation of landlord and tenant not affected by transfer of landlord's interest.

In the following cases of transfer of a landlord's interest the relation of landlord and tenant continues between the tenant and the substituted landlord, and their mutual rights and duties are the same as the mutual rights and duties of the tenant and the landlord whose interest has been transferred :—

1—where the landlord's interest or any portion thereof is transferred by private sale, gift or otherwise[9] :— Regulation XVIII of 1812, s. 3, cl. 2.

2—where the landlord's interest or any portion thereof is transferred by an execution sale :— Regulation XVIII of 1812, s. 3, cl. 2.

3—where an estate is sold for arrears of revenue, or a tenure or under-tenure is sold for arrears of revenue or of its own rent, and the purchaser has no legal power to avoid the tenant's interest, or when he has such power and does not elect to exercise it :— W. R. Jan.-July 1864, Act X, 7.

4—where the landlord's interest is transferred by the operation of the laws of inheritance or by will. Reg. XVIII of 1812, s. 3, cl. 2 : Smith 402.

[9] This word " otherwise " may include mortgages, as to which see *Smith* 381 note.

In case No. 1 it is the transferree's duty to inform the tenant of the transfer; and, if he omit to do so, the tenant shall not be liable to him for any rent falling due after the transfer and paid to the transferrer in ignorance of the transfer.[1]

See 4 W. R., Act X, 38.

ARTICLE **10.**

In what cases relation of landlord and tenant not affected by transfer of tenant's interest.

In the following cases of transfer of a tenant's interest, the relation of landlord and tenant continues between the landlord and the substituted tenant, and their mutual rights and duties are the same as the mutual rights and duties of the landlord and the tenant whose interest has been transferred:—

[a] 19 W R. 99.

1—where the tenant's interest is, with the landlord's consent,[a] transferred by an execution sale, or by private sale, gift, or otherwise. Such consent may be given before or after the transfer. Receipt of rent from the transferree as tenant[2] with knowledge of the transfer is equivalent to consent.

W. R. Jan.-July 1864. Act X, 98.

2—where the tenant's interest is transferred by execution sale or by private sale, gift, or otherwise in any case in which such interest is so transferable by contract or custom, and the transferree has complied with the provisions (if any) of law for the time being in force as

[1] See *Smith* 281; *Fawcett* 117; *Woodfall* 243; and 4 Ann. cap. 16. which abolished attornment and substituted notice to the tenant. In cases Nos. 2 and 3 the Sale Laws provide for notice. In case No. 4 notice might well be desirable also. I have said nothing in the text about the effect of an assignment by the landlord upon *covenants*. According to the law of England as a contract could not at common law be assigned, the landlord's assignee could neither sue nor be sued upon the express covenants in a lease: and (according to the better opinion) though certain covenants implied by law ran with the land, none ran with the reversion. Then came the statute 32 Hen. VIII cap. 34, the effect of which was to enable such assignee to sue and be sued upon *covenants running with the land* contained in a *lease made by deed*. When the lease is not by deed the assignor can still sue. For breaches of other covenants the assignee cannot sue or be sued (Woodfall, 232 235; Smith 283-395; 1 Smith's Leading Cases 67 *et seq.*) Questions similar to these have not been raised, discussed, or settled as regards Mofussil leases in these provinces, and the landlord's transferree, in the case of a transfer properly made, is generally supposed to be able to sue and to be liable to be sued upon the covenants express or implied. Whether, unless the tenant accepted the new landlord as the person liable to him and absolved the old one from liability, he would be debarred of his remedy against the latter, has never, I believe, been decided. As regards the general point, it is to be borne in mind that contracts are assignable in India.

[2] See remarks of *Loch*, J—2 B. L. R. A. C. 133. It is a very common practice for landlords to receive rent tendered by a person other than the actual tenant or his duly authorized agent. In such cases the *dakhilah* or receipt specifies the payment to be made *marfat, guzrat*=by, or through, the person who brings the money, and who frequently is an unregistered purchaser of the tenant's interest. In this way the landlord ignores the transfer, and (it is supposed) protects himself against any admission of the transferree being his tenant (15 W. R. 197). Sometimes the landlord or his people are well aware of the transfer: sometimes they are wholly ignorant of it. When litigation arises each party endeavours to twist the point in his own favour. The practice of receiving rent from any one but the tenant or his well-known agent or messenger is a vicious one and should be put a stop to. When zemindars complain of the difficulty of discovering who are the real tenants to be sued, they forget that they have by this practice created the difficulty for themselves.

to registering the transfer in the landlord's sherishtah, or the landlord has without such registration accepted the transferree as his tenant. Receipt of rent from the transferree as tenant with knowledge of the transfer is equivalent to acceptance.[3]

2 Board's Rep. 165: 2 B L. R. A. C. 133: 8 B. L. R, 17.

3—where the tenant's interest is a tenure upon which the right of selling or bringing to sale for an arrear of rent was specially reserved by stipulation in the engagements interchanged on the creation of such tenure, and it is sold for arrears of its own rents under the summary procedure hereinafter declared applicable to such tenures, and the purchaser duly registers his name in the landlord's sherishtah, or the landlord without such registration accepts him as his tenant. Receipt of rent from the purchaser with knowledge of the purchase is equivalent to acceptance.[4]

Reg. VIII of 1819: s. 8, cl. 1.

4—where the tenant's interest is an under-tenure which by the title-deeds or the custom of the country is transferable by sale, and such under-tenure is sold in execution of a decree for arrears of rent due thereupon according to the special procedure hereinafter provided for such sales, and the purchaser duly registers his name in the landlord's sheristah or the landlord without such registration accepts him as his tenant. Receipt of rent from the purchaser with knowledge of the purchase is equivalent to acceptance.

Act X of 1859, s. 105: Act VIII (B.C.) of of 1865, s. 4.

5—where the tenant's interest is transferred by the operation of the laws of inheritance, or by will in any case in which such interest is so transferable, and the transferree has complied with the provisions (if any) of law for the time being in force as to registering such transfer or succession in the sheristah of

1 W. R. 10.

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[3] In the case at W. R. Jan.-July 1864, p. 98, it was held that mere cognizance by the landlord of the transfer is not enough to cure a defect arising from non-registration—that the transferree must have been accepted as tenant. This agrees with what Lord Kenyon said in *Auriol* vs. *Mills* (4 T. R. 94) that, if the lessee assign over the lease, and the lessor accept the assignee as his tenant either expressly or impliedly, as for instance by receiving rent from him, he cannot afterwards bring an action of *debt* for his rent against his original lessee; though he may, if he think proper, refuse to accept the assignee as his tenant, and so long he may sue in debt for rent against his original lessee. In later cases however this principle has been departed from, and the landlord has been held bound by mere cognizance—See 8, B. L. R. 12, 14, 15, 16; and 13 B. L. R. 152 *note*, 153 *note*.

[4] But consider the case at Marshall 252, in which a *patnidar* received from a *darpatnidar* a kabuliyat containing a condition that, if the annual rent remained in arrear for a longer period than one month, the *patnidar* should have a right of re-entry The rent fell into arrear and the *patnidar*, instead of availing himself of this condition, brought the *darpatni* to sale under the summary procedure, apparently without giving notice of the special condition in the kabuliyat. It was held that this special condition could not be enforced against the purchaser. Such a condition, it may be observed, is not only not an ordinary incident of a *darpatni*, but is opposed to the principle of sale for arrears.

the landlord, or the landlord has without such registration accepted the transferree or successor as his tenant. Receipt of rent from such transferree or successor as tenant with knowledge of the transfer or succession is equivalent to acceptance.

7 W. R. 319: 8 B L. R. 4 *note*, 6 *note*, 17: 19 W. R. 99: 21 W. R. 96.

If the interest of a tenant be transferred in any case other than the cases above specified, the tenant is not by such transfer released from liability to his landlord.[5]

ARTICLE **11.**

Relation of landlord and tenant not affected by partition of joint revenue-paying estate.

When partition of a joint revenue-paying estate is made upon the application of the proprietors or in execution of a decree of the Civil Court,[a] the relation of landlord and

[a] S. 265 of the Code of Civil Procedure, Act X of 1877. Cl. 2, s. 8, Reg. XVIII of 1812.

[5] See *The Transfer of Property Bill*, section 65, paras. (*o*) and (*p*).

The above two Articles are submitted with much diffidence as the result of the law in its present state upon a subject of much intricacy. The following analysis may be useful to assist criticism:—

I—*Patni*, a valid tenure in perpetuity; heritable by its conditions; and declared by law (cl. 1, s. 3, Reg. VIII, of 1819) to be transferable by sale, gift, or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the courts of judicature in the same manner as other *real* (?) property.—Is the tenure-holder discharged from liability, *i.e.* accruing after transfer, to the landlord by a transfer (*a*) by private sale, gift, or otherwise, (*b*) by an execution sale, (*c*) by a sale under the summary procedure of the Regulation? No answer in the statute law—in case—law answer "yes" as regards (*b*), Marsh. 212: no answer as regards (*a*) and (*c*). Probable answer as regards these in the affirmative, if requirements of section 5 of the Reg. as to registration, security, &c. be complied with (see Reg. VIII of 1819, s. 5, clause 1: 3 B. L. R. P. C. 53; and 15 W. R. 180).

II—Tenures upon which the right of selling or bringing to sale for an arrear of rent has been specially reserved by stipulation in the engagements interchanged on the creation of the tenure (cl. 1, s 8, Reg. VIII of 1819).—It appears from the Preamble to the Regulation that this is an essential attribute of a *patni* tenure; but there may be tenures having this attribute and not having the other attributes of No. I. Are such tenures (1) transferable by sale, gift, or otherwise, (2) heritable or divisible, (3) saleable in execution? Neither the statute law, nor the case-law (so far as I am aware) furnishes a distinct answer to any of these queries, nor to the further question respecting the substitution of the transferree as the person liable to the landlord. The sale to which these tenures are by their engagements liable is a summary sale without a decree (see *Proceedings of the Legislative Council* for May 1856, page 308). After such a sale the former tenure-holder is however understood to be discharged from liability accruing after the confirmation of the sale.

III—Under-tenures (tenures) which by the title-deeds or the custom of the country are transferable by sale (s. 105 of Act X of 1859: s. 4 of Act VIII (B. C.) of 1865: in cl. 7, s. 15, Reg. VII of 1799 "which by the title-deeds or established usage of the country are transferable by sale or otherwise)"—Section 105 of Act X of 1859 expressly made these saleable in execution of decrees for rent according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force. Are they (1) transferable by gift, (2) heritable or divisible, (3) saleable in execution of decrees other than those for rent? No categorical answers to these questions are to be found in the statute law nor (so far as I am aware) in the case-law.

All persons possessing a *permanent transferable interest in land intermediate between the zemindar and the cultivator* are required to register in the sherishtah of their landlord all transfers by sale, gift, or otherwise, and all successions (s. 27 of Act X of 1859: s. 26 of Act VIII (B.C.) of 1869). Nos. I and III and probably II fall within the purview of these provisions. Is admitting the new tenant to registration a sufficient discharge of the old tenant from future liability?

IV—Holdings transferable by custom (7 W. R. 528, F. B.), or contract. Transfers of these need not be registered (7 W. R. 16: 1 B. L. R. s. n. vii.) If the old tenant is to be discharged from future liability, the landlord must have notice. Will notice discharge the old tenant? Is the zemindar bound to accept any substitute offered—to take a pauper instead of a solvent respectable tenant—without security?

tenant is not affected by such partition[6] save as provided in the following rules:—viz.

1.—When the tenant's interest consists of a *patni* or other permanent intermediate tenure at a fixed rent created by all the proprietors and by any law for the time being in force protected against a sale for arrears of revenue, or not so protected but admitted by all the recorded proprietors to be not liable to enhancement by them or persons deriving title from them, such tenure and the rent payable thereupon may be entirely assigned to one or more[7] of the separate estates created by the partition, or may be left appertaining jointly to all those estates in the proportion which each separate estate bears to the unpartitioned estate. If such tenure be so left appertaining jointly to all the separate estates, there shall be assigned to each separate estate such share of the rental of the tenure as shall bear the same proportion to the entire rental of the tenure as such separate estate bears to the unpartitioned estate. Act VIII (B.C.) of 1876, s. 111.

2.—If any proprietor of an estate held in common tenancy shall have given his share or a portion of it in *patni* or other tenure or lease, such tenure or lease shall after the partition be valid as regards the lands finally allotted to the share of the lessor, and only as to such lands. Act VIII (B.C.) of 1876, s. 128.

3.—When the local area of the land held by any tenant, who before partition paid his rent to the proprietors of the unpartitioned estate jointly,[8] is wholly included within one of the separate estates created by the partition, such tenant shall after the partition pay his rent to the proprietor of the separate estate within which the local area of the land for which such rent is payable is so wholly included.[9]

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[6] The above Article applies to revenue-paying estates only. As to *lakheraj* land, tenures, under-tenures, or holdings there is no authority on the subject of the Article to be found in the existing law. The partition of revenue-paying estates is made by the Revenue Authorities. The Civil Courts have jurisdiction in cases of partition of other property, where the interests of Government are not affected (20 W. R. 182 : 8 W. R. 128, *Shikmi taluk*: 6 W. R. Civ. Rul. 192, *ditto*: 4 B. L. R. Ap. 55, *Lakheraj land*: 17 W. R. 137, *ditto*): and, as a rule (to which there are however some few exceptions) all property is partible. There is no law for the apportionment of rent (1) when the interest of joint landlords in property other than a revenue-paying estate is divided, (2) when a landlord sells part of such property, the part sold including a portion only of a tenant's holding. The result is confusion and litigation.

[7] There is no express provision in the Act for the apportionment of the rent, when the tenure is assigned to more than one of the separate estates.

[8] "or to more than one of them jointly or to any one of them"—might be added, as both arrangements are common. I have not however inserted these words, as the authority for them in the existing law is doubtful.

[9] There is no authority *totidem verbis* for this rule in the statute law or the case-law: but it is followed in practice and no one ever thinks of objecting to it. It is derivable from the whole purview of Act VIII (B.C.) of 1876. See sections 77, 87, and 123, and the definitions of "assets," "rental," &c.

4.—When the local area of the land held by any tenant, who before partition paid his rent to the proprietors of the unpartitioned estate jointly, is wholly included within more than one of the separate estates created by the partition, such tenant is after the partition entitled, if he so desire, to pay his rent to the proprietors jointly of the separate estates within which the local area of the land for which such rent is payable is so wholly included, but it shall be lawful for any of such last-mentioned proprietors to bring a suit against the others of them and the tenant in order to have such rent apportioned.[1]

L. R. 4 Calc. 90; B L. R. F. B 589: 1 C. L. R. 453.

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[1] It has been repeatedly decided that a tenant who has been in the habit of paying his rent (*i.e.* as a whole or undivided sixteen annas) to joint landlords cannot be compelled without his own consent to pay it to them separately, that is, to pay to one or more a part or parts of the rent proportioned to his share or their shares in the joint property—see Article 60 *post*.

There is no rule for apportionment of the rent, when the landlord sells a portion of the tenure, under-tenure, or holding. The following rule is proposed in *The Transfer of Property Bill*;—"when only a part of the property leased is transferred by the lessor, he may determine what proportion of the rent reserved by the lease is payable in respect of the part so transferred"—*i.e.* presumably, "may determine before or at the time of transfer." In Mr. Woodfall's work it is said:—"If the lessor dispose of the reversion in part of the lands, either by deed or will, the rent is apportionable, but the lessee's concurrence to the apportionment is necessary, unless it be settled by a jury." (p. 364). "At common law," says Mr. Smith, "apportionment took place when there was a division of the land into distinct portions, but never in respect of time." (p. 177) Mr. Chancellor Kent says that the objection to the doctrine of apportionment of rent is, that it exposes the tenant to several suits or processes of distress for a thing which was originally entire, and he ought not be obliged to pay his rent in different parcels, and to several landlords, when he contracted to pay, in one entire sum, to one person; but that the convenience of mankind has dictated the necessity of an apportionment in a variety of cases, *e.g.* when part of the reversion is sold, when property is divided between children, or a portion sold to meet family exigencies; and by act of law in cases of descent and judicial sales. He observes that the tenant may avoid several suits and distresses by punctual payment. He adds that, whenever the question becomes a litigated one, it is the business of the Jury (Court) upon evidence produced to apportion the rent to the *value* of the land; that these things are now generally regulated by the agreement of the parties, whenever a sale of part only of the demised premises is made; and the tenant has no concern with the transaction, since he pays no more than his stipulated rent and to the claimants in the portions settled by themselves—see *Kent's Commentaries*, Vol. III, p. 605-6; also I Story, Eq. Jur. 502. The latter authority also adds that, if part of the land be evicted by a title paramount, the rent is apportioned. In India this would doubtless be a ground of abatement (1 B. L. R. A. C. 87: 12 W. R. 109). Abatement really depends upon the principle of apportionment. The Lands' Clauses Consolidation Act, 1845, 8 and 9 Vict. cap. 18, authorizes the apportionment of the rent where part only of lands comprised in leases for terms of years is taken for the purposes of public undertakings; and a similar apportionment may be made under the 17 and 18 Vict. cap. 32, when property is required for the purposes of the Church Building Acts. So the question whether a ryot is entitled to abatement for land taken up by Government for a road has been entertained in this country (6 W. R. Act X, 24. See also 16 W. R. 201, and 2 C. L. R. 5). There is probably no country in the world where so many fractional interests in land are to be found as in Bengal. This is in great measure due to the operation of the laws of inheritance. In such a state of things clear rules for the apportionment of rent are peculiarly necessary; and a considerable amount of litigation is due to the want of such rules. For the apportionment of the Government revenue the Statute Book contains distinct and excellent provisions, the operation of which is sufficiently satisfactory.

SECTION III.—*Of the Determination of the Relation of Landlord and Tenant.*

ARTICLE 12.

The relation of landlord and tenant is determined as between the parties thereto by any of the following occurrences in the following cases respectively, that is to say—

Relation of landlord and tenant in what cases determined by what occurrences.

1—in the case of a lease for a term—by the expiry of such term, except the tenant have a right to the possession of the land otherwise than by virtue of the lease, or being a ryot have cultivated or held the land for a period of twelve years without a written contract restraining him from acquiring a right of occupancy.

7 B. L. R. Appen 11.

By expiry of term—exception.

7 W. R. 283 : 2 W. R. Act X. 54 : 4 W. R. Act X. 1 : 12 B. L. R. 229 : 19 W. R. 353. Act X of 1859, ss. 6, 7 : Act VIII (B.C.) of 1869, ss. 6, 7.

2—in the case of a lease or parol letting by a landlord whose interest is limited in respect of time and who has no power to create a tenancy extending beyond the period of his own interest—by the determination of the landlord's interest, except the tenant being a ryot have cultivated or held the land for a period of twelve years without a written contract restraining him from acquiring a right of occupancy.

By determination of landlord's limited interest.

Marsh. 166 : 22 W.R. 274.

Exception.

Act X of 1859, ss. 6, 7 : Act VIII (B.C.) of 1869, ss. 6, 7.

3—in the case of a ryot holding otherwise than under a lease for a definite term[a]—by relinquishing the whole of the land held or cultivated by him as one holding, provided he gives notice of his intention in writing to the person entitled to the rent of the land or his authorized agent, in districts or parts of districts where the Fuslee year prevails, in or before the month of Jeyt, and in districts or parts of districts where the Bengalee year prevails, in or before the month of Poos, of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the person entitled to the rent of the land, or his agent, refuse to receive any such notice, and

[a] 5 W. R. Act X. 78.

By relinquishment of land by ryot after notice given.

Act VIII (B.C.) of 1869, section 20 : Act X of 1859, section 19, which however directs service in or before the month of Cheit.

[2] See 5 W. R. Act X, 81, and 7 B. L. R. App. 11. In the former case it was decided that a ryot holding under a lease for a term cannot throw up during the term : and in the latter case a notice of relinquishment was held unnecessary upon the expiry of a lease. These cases, I think, support the text. A *patnidar* cannot at his own will throw up, surrender, or relinquish his *patni*, 20 W. R. 383; but see s. 12 of Reg. VIII of 1819, which contemplates relinquishment, though perhaps not without the zemindar's consent This will fall under the saving clause as to contracts. The text applies to ryots only.

to sign a receipt for the same, the ryot may make an application to the Collector in whose jurisdiction the lands are situate, who shall thereupon cause the notice to be served on such person or his agent in the manner hereinafter provided for service of notices of enhancement.

6 W R 67 : 7 W. R. 153 : 12 W. R. 304 : 20 W. B. 129 : 24 W. R. 344.

By abandonment.

4—in the case of a ryot—by abandonment, when he ceases to cultivate the land and leaves the neighbourhood without arranging for payment of the rent.[3]

Act VIII (B.C.) of 1869, s. 22 : Act X of 1859, s. 21.

By ejectment of ryot for non-payment of rent.

5—in the case of a ryot from whom an arrear of rent is due at the end of the Bengalee year or at the end of the month of Jeyt of the Fuslee or Willayuttee year—by ejectment from the land in respect of which such arrear is due. But no ryot having a right of occupancy or holding under a pottah, the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the procedure hereinafter provided. The right to eject for non-payment of the rent of any one year shall be deemed to have been waived by the receipt of rent for a subsequent year.[4]

Marsh. 25.

Act VIII (B C.) of 1869, s. 23 ; Act X of 1859, s. 22.

By ejectment of farmer or lease-holder for non-payment of rent.

6—in the case of a farmer or other lease-holder not having a permanent or[5] transferable interest in the land, from whom an arrear is adjudged to be due—by cancelment of the lease and ejectment of the lease-holder. But no such lease shall be cancelled and no such lease-holder shall be ejected otherwise than in execution of a decree or order under the procedure hereinafter provided.

[a] I. L. R. 2 Calc. 146 : 1 B L. R. F. B. 29 : 23 W. R. 238, 271, 440 : 20 W. R. 401 : 24 W. R. 461

[b] 7 W. R. 152 : I. L. R. Calc. 399 P. C. : 16 W. R. 185 : 5 W. R. Act X, 17.

By notice to quit in certain cases.

7—in the case of a ryot not having a right of occupancy[a] or of a tenant for a term holding over after the expiry of his term[b] with the express or implied consent of his landlord—by a reasonable notice to quit.

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[3] The cases leave it thus indefinite. The proposition, if adopted by the Legislature, should be made more precise. In the case at W. R. Special No. Jan.-July 1864, page 270, a *howladar* was held to have abandoned a *howla*.

[4] This principle applies equally to the case following, *i.e.* of a farmer or lease-holder see Woodfall, 294 and cases quoted; Smith 141, 150. As there is no case, I have not however inserted it in the text. In the case quoted at Marsh. 25, there was a distraint : and, under English law, a distraint for, or an absolute and unqualified demand of, rent accruing after a forfeiture will amount to a waiver. This case thus introduces a portion or fragment of a principle, the whole of which might properly be made law.

[5] The force of the "or" is remarkable as showing that, in the opinion of the Legislature, a farm (*ijarah*) is not assignable.

Explanation.—The institution of a suit for ejectment is not equivalent to a reasonable notice.[6]

I. L. R. 2. Calc. 146, over-ruling 23 W. R. 440, on this point.

8—in the case of any tenant—by forfeiture, when the tenant directly repudiates the relation of landlord and tenant, and sets up an adverse title in another or in himself, and the landlord thereupon elects to treat such relation as determined.[7]

By forfeiture, when tenant sets up an adverse title.

18 W. R. 465 : 25 W. R. 147 : 7 W. R. 145 : 2 W. R. Act X, 2 : 19 W. R. 95 : 25 W R. 448 : I. C. L R. 421 : 2 C. L. R. 208.

9—in the case of [tenures and][8] under-tenures in any revenue-paying estate in the permanently-settled districts of Bengal, Behar, and Orissa—by the sale of such estate for the recovery of arrears of revenue due on account of the same, when the purchaser is a person other than a late proprietor or co-partner[a] and elects to determine

Act XI of 1859, s. 37

By sale of entire estate for its own arrears of revenue in the permanently-settled districts.

[a] Act XI of 1859, s 53 : 7 B. L. R. Appen. 52.

[6] What is a reasonable notice should be defined by the Legislature. In the case at 1 B. L. R. F. B. 29, Sir Barnes Peacock said that a notice given in the last month of a current year would not be sufficient. A notice served three whole months before the expiration of the year was held reasonably sufficient (22 W. R. 548).

[7] See Woodfall, 326 : Smith, 318 : Fawcett, 283, &c. I think the above is on the whole the result of the cases, though at 22 W. R. 448, a doubt is intimated whether this can be said to be settled law in this country. Under English law a parol disclaimer of the landlord's title will effect a forfeiture of a tenancy from year to year or tenancy at will, if the landlord so elect; but will not effect a forfeiture of a lease for a term certain. But a disclaimer by matter of record, as for example when a tenant in answer to an action for rent denies the relation of landlord and tenant and sets up a title in himself or some third party, will work a forfeiture of any lease. The principle of forfeiture by disclaimer, so far as it has yet been introduced into these provinces, rests (I believe) wholly upon case-law; and the cases are not sufficiently numerous or exhaustive to have given form and shape to the principle in its application to this country. I think that the principle is one which the courts would properly apply in administering justice, equity and good conscience (see 4 Kent's Commentaries 115) : and I think it extremely desirable that the Legislature should define and regulate its application. Having regard to the circumstances of this country, I think mere words spoken or the claim by a tenant of a greater interest than he is entitled to (*Woodfall*, 283 : Smith, 137) ought not to work a forfeiture; but I do think that, when a tenant in answer to a claim for rent or to avoid legitimate enhancement, deliberately in court denies the title of his real landlord, and pretends to hold under a rival zemindar, or by way of making evidence in anticipation executes a registered kabuliyat in favour of such rival zemindar, forfeiture of his right of occupancy or whatever other right he possesses is a reasonable and proper retribution. That such *mala fides* is too common—the *zimba* system in Backergunge is a notorious instance—the experienced are aware, and I know no more effectual way of striking a blow at an evil generally complained of than by enacting a reasonable rule as to forfeiture by disclaimer. This rule should of course provide for waiver of the forfeiture by distraint for, or receipt of, rent accruing after the forfeiture, or by other conduct on the part of the landlord showing that, being aware of the disclaimer, he had elected to waive it.

I have not inserted in the text anything about forfeiture for breach of an express condition which provides that on breach thereof, the landlord may re-enter or the lease shall become void, as this properly belongs to the domain of *contract*, which is saved by Article 2. The cases on the subject will be found at 7 W. R. 132 : Marshall, 252, 366 : 2 W. R. Act X, 101 : 1 Board's Rep. 21 : 2 Board's Rep. 52 : 3 B L. R. Appen. 53. As regards service tenures, it has been held that, though the landlord may not at his own pleasure dispense with the services and take back the lands (6 W. R. 199 : 14 Moo. In Ap. 247 : I. L R. 3, Calc 259), a distinct refusal to perform the services will subject the tenant to ejectment (1. L. R. 4 Calc. 67).

[8] The words in brackets are necessitated by the definitions in the Digest. This section (37 of Act XI of 1859) is another instance of the confusion in the existing law in the use of the terms "tenure," "under-tenure." The section speaks of avoiding "under-tenures" and amongst the exceptions we find "tenures". See note at p 106 of my edition of the Regulations; and s. 105 of Act X of 1859, where similar confusion occurs.

the relation of landlord and tenant and within a reasonable time does some act evidencing that intention.[b] From the operation of this rule are exempted the following, that is to say—(*a*) istemrari or mukurraree tenures held at a fixed rent from the time of the permanent settlement: (*b*) tenures existing at the time of settlement, which have not been held at a fixed rent, and which are therefore liable to enhancement: (*c*) *talukdari* and other similar tenures created since the time of settlement and held immediately of the proprietor of the estate, and farms for terms of years so held, if such tenures and farms have been duly registered under the provisions of Act XI of 1859 or if special registration have been applied for and be subsequently granted: (*d*) leases of lands[9] whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burying or burning grounds have been made, or wherein mines have been sunk.

10 Moo. In Ap. 123 : 13, Moo. In. Ap. 317 : 2 B. L. R. P. C. 30 : 23 W. R. 245 : 22 W. R. 29 (which extends the power to the purchaser's assignee) : 7 W. R. 91, and see Dumpor's case, 1 Smith L. C. 51.

Exceptions.

Act XI of 1859, s 51.

10—in a revenue-paying estate in a district not permanently settled, in the case of tenures and under-tenures created by the defaulter or his predecessors being representatives or assignees of the original engager or which such engager was, under the conditions of his settlement, competent to set aside, alter or renew, and in the case of all agreements with ryots or the like settled or accredited by the first engager or his representatives subsequently to the last settlement—by the sale of such estate for the recovery of arrears of revenue due on account of the same, when the purchaser is a person other than a late proprietor or co-partner and elects to determine the relation of landlord and tenant and within a reasonable time does some act evidencing that intention. From the operation of this rule are exempted the following, that is to say—leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or

By sale of estate for its own arrears of revenue in a district not permanently settled.

Act XI of 1859, s. 52.

Exceptions.

9 See I. L. R. 3 Calc. 293. Must these leases be in writing, or can the term "lease" be construed so as to include a parol demise?

burning or burying grounds have been made, or wherein mines have been sunk, so long as the rent reserved in the lease is paid and the land is duly appropriated to the purpose for which the lease was granted.

Explanation to 9 and 10.—A purchaser at a revenue sale is not entitled to annul an existing lease within the year in which the sale takes place on the ground that such lease is collusive without a decision of a Civil Court to that effect. Regulation V of 1812, s 4.

11—in the case of [tenures or][8] under-tenures in any tenure transferable by the terms of the grant creating the same or by the custom of the country[1]—by the sale of such transferable tenure for arrears of revenue due on account of the same, when the purchaser is a person other than a late proprietor or co-partner[2] and elects to determine the relation of landlord and tenant and within a reasonable term does some act evidencing that intention. Act VII (B C.) of 1868, s. 12.

By sale of a tenure for arrears of Government revenue.

Definition.—The term "transferable tenure" in this paragraph includes any interest in land, whether rent-paying or lakhiraj, other than a revenue-paying estate, and any fishery, whether such tenure is resumable or not, and whether the right of selling or bringing it to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument. Act VII (B.C.) of 1868, s. 1.

From the operation of this rule are exempted the following, that is to say—(*a*) Istemrari or mokurraree tenures[b] which have been held at a fixed rent from the time of the permanent settlement: (*b*) tenures[b] existing at the time of permanent settlement which have not been held at a fixed rent and which are therefore liable to enhancement: (*c*) tenures[b] created or recognized by the settlement proceedings of any current temporary settlement as tenures bearing a rent which is fixed for the period of such settlement: (*d*) tenures[b] of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon permanent Act VII (B.C.) of 1868, s. 12.

Exceptions.

[b] As in the Act; but the term "tenures" here probably includes "under-tenures" according to the definition in the digest.

[1] See definition of "tenure" in section 1 of Act VII (B C.) of 1868.

[2] This follows from the words "subject to the provisions in and by the said Act XI of 59 provided for the sale of estates" &c. in Act II (B C) of 1871, which has the effect extending the provisions of section 53 of Act XI of 1859 to sales of tenures under t VII (B C.) of 1868.

gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made.[3]

Regulation VIII of 1819, s. 11, cl. 2.

12—in the case of a lease originating with the holder of a tenure upon which the right of selling or bringing to sale for an arrear of rent was specially reserved by stipulation in the engagements interchanged on the creation of the tenure and creating a middle interest between the resident cultivators and the tenure-holder—by a summary sale without a decree or by a sale in execution of a decree,[a] in the manner hereinafter provided, of the whole[b] of such tenure for arrears of rent due on account of the same from the grantor of such lease or some one deriving title under him, when the purchaser is a person other than the actual defaulter[4] and elects to determine the relation of landlord and tenant, and within a reasonable time does some act evidencing that intention.

By sale for arrears of rent of tenure made so saleable by contract on its creation.

Regulation VIII of 1819, s. 8, cl. 1.

[a] L. R. 1 I. A. 189: S C. 13 B. L. R. 408: and 8 W. R. 507.

[b] 15, W. R. 446: 17 W. R. 182: 20 W. R. 275.

1 R. J. & P. J. 109.

3 B. L. R. 431: 6 B. L. R. Appendix 5: 5 W. R. Act X, 63: 12 W. R. 383.

Regulation VIII of 1819, section 11, clause 2.

Explanation I:—This rule is not intended to interfere with those cases in which authority to grant such leases was specially given to the tenure-holder.

Ditto, clause 3.

Explanation II:—Nor is it to be construed to entitle the purchaser of a *taluk* or other saleable tenure intermediate between the *zemindar* and actual cultivators to eject a *khudkasht* ryot or resident and hereditary cultivator: nor to cancel *bonâ fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

Regulation VIII of 1819, section 12.

Explanation III:—Nor is it to apply to any private transfer by a *talukdar* of his own interest, nor to

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[3] Observe the difference between these exceptions and those to (8) and (9). In the following cases there is no power to avoid tenures or under-tenures:—(1) When a proprietor or co-partner by re-purchase or otherwise recovers possession of an estate after it has been sold for arrears of revenue: (2) when an estate has been sold for arrears or demands other than those accruing upon itself: (3) when a share or shares only of an estate have been sold: (4) when an estate or tenure has been sold in execution of a Certificate under Act VII (B.C.) of 1868 (s. 24).

Act XI of 1859, s. 53

Act XI of 1859, ss. 13, 14, 54.

[4] See section 9 of the Regulation. In the case at 5 W. R 107, a brother of the registered patnidar living jointly with him was held to be an actual defaulter within the meaning of this section, though his name was not registered in the zemindar's sheristah. In another case at 24 W R 129, 133, a person who had purchased a share of the *patni* and had applied for registration (which was not, however, effected owing to the large demand for salami made by the zemindar,) was held not to be an actual defaulter.

a public sale in execution of a decree,[5] nor to the case of a relinquishment by the *talukdar* in favour of the *zemindar*, nor to any act originating with the former holder other than default as aforesaid. All such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is subject to any restriction put upon the tenure by his act.

13—in the case of tenancies held to be incumbrances upon an under-tenure which by the title-deeds or the custom of the country is transferable by sale, when such incumbrances have accrued upon such under-tenure after its creation[a] by any act of any holder thereof, his representatives or assignees——by the sale of the whole[b] of such under-tenure, under the special procedure hereinafter provided, in execution of a decree passed for arrears of rent due in respect of the same, when the purchaser is a person other than the previous holder through whose default the tenure was brought to sale, and such purchaser elects to determine the relation of landlord and tenant and within a reasonable time does some act evidencing that intention.

Act VIII (B.C.) of 1869, ss. 66, 59 : Act VIII (B.C.) of 1865, ss. 16, 4.

By sale of under-tenure transferable by title-deeds or custom of the country in execution of a decree for arrears of its own rent.

[a] 19 W. R. 106.

[b] 5 B. L. R. Appendix 37 : 13 W. R. 257.

8 B. L. R. 184, 431: 25 W. R. 109 ; 11 W. R. 160.

Explanation I:—This rule is not intended to interfere with those cases in which the right of making incumbrances has been expressly vested in the holder of the

Act VIII (B.C.) of 1869, s. 66 : Act VIII (B.C.) of 1865, s. 16.

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[5] Therefore if a *patni taluk* be sold in execution at the instance of a decreeholder not the landlord holding a decree for rent, the purchaser cannot avoid the under-tenures. But what if the zemindar, instead of proceeding to a summary sale under the Regulation, obtain a decree for arrears of rent in the ordinary way and then proceed to sell the *patni*? Will such a sale avoid incumbrances and under-tenures? Can such a sale be held under the provisions of Act VIII (B.C.) of 1865 or the corresponding sections of Act VIII (B.C) of 1869? Can a *patni* tenure be termed an *under-tenure which by the title deeds* or *the custom of the country is transferable by sale* within the meaning of s. 59 of Act VIII (B.C) of 1869, and s. 4 of Act VIII (B.C) of 1865? As before pointed out, a tenure may be *saleable for its own arrears of rent* within the purview of clause 1, s. 8 of Regulation VIII of 1819 without being *transferable by sale by the title deeds or the custom of the country*. If a *patni* can be sold under Act VIII (B.C.) of 1865 or s. 59 of Act VIII (B.C.) of 1869, the result as to avoidance of under-tenures is different It is submitted that there should be no difference between the effects of a sale of a *patni* for its own arrears under the summary procedure of the Regulation and a sale of a *patni* in execution of a decree for its own arrears. It may be observed that the Privy Council decided in the case at 13 B. L. R. 408, that the execution sale of a *patni* under section 105 of Act X of 1859 avoided incumbrances. This section enacts that the tenure may be brought to sale *according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being is force*. Act VIII (B.C.) 1865 had not then been passed, and these words were held to extend to sales under section 105 the effect of Regulations VIII of 1819 and I of 1820. These words have been omitted in Act VIII (B.C.) of 1869, and may be held to be affected by Act VIII (B.C.) of 1865.

under-tenure by the written engagement under which such under-tenure was created or by the subsequent written authority of the person who created it, his representatives or assignees.

[a] 5 B. L. R Appen. 18: 22 W. R. 133.
[b] 16 W. R. 206: 20 W. R. 426.
Act VIII (B.C) of 1869, s. 66.
Act VIII (B.C.) of 1865, s. 16.

Explanation II:—Nor is this rule to be construed to entitle the purchaser to avoid a right of occupancy[a] or to eject *khudkasht* ryots or[b] resident and hereditary cultivators, nor to cancel *boná fide* engagements made with ryots or cultivators of the classes aforesaid by any holder of the under-tenure or his representatives except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.

CHAPTER II.

Of Proprietors, Tenure-holders, Undertenure-holders, Ryots and Under-ryots.

Section I.—*Of the Rights and Duties of Proprietors.*

ARTICLE 13.

Reg. VIII of 1793, s. 52: Reg. V of 1812, ss. 2 and 3: Reg. XVIII of 1812, s. 2: Reg. VIII of 1819, s. 2 (validation of previous invalid leases): W. R. Special No. Jan.-July 1864, Act X, 130.

Proprietors competent to grant leases for any period, in any form and at any rent.

Proprietors are competent to grant leases,[6] for any period even to perpetuity, and in any form and at any rent most convenient to the contracting parties and most conducive to their respective interests, of land which was not at the time of the permanent settlement held by tenure-holders, undertenure-holders or ryots, or which being so held has since that time come into the *khas* or immediate possession of such proprietors,[7] subject however to the other provisions of this Digest and to the following conditions, and not[a] otherwise:—

[a] Reg. VIII of 1793, s. 65.

Reg. VIII of 1793, s. 52.

Conditions.

(1) All engagements contracted with tenants shall be specific as to the conditions thereof and as to the amount of rent reserved.

Reg. VIII of 1793, s. 54: Reg. XII of 1805, s. 7.

(2) All impositions upon the tenants under the denomination of *abwab*, *mahtut*, and other appellations shall be

[6] Does "lease" include a parol letting? In English law it does.

[7] These words are submitted as the equivalent of "the remaining lands of his *semindari* or estate" in section 52 of Reg. VIII of 1793—see B. L. R. F. B. 231, 235, 253, 297, 317, 320

consolidated with the actual rent into one specific sum, which shall be inserted in the pottah or lease as the rent payable by the tenant. No new *abwab* or *mahtut* in addition to this specific sum shall be imposed upon the tenant under any pretence whatever, and all stipulations and reservations for the payment of such shall be null and void. Reg. VIII of 1793, s. 55: Reg. V of 1812, s. 3: 3 B. L. R. A. C. 44, but see 22 W. R. 12.

(3) No person contracting with a proprietor or employed by him in the management of the collections shall have authority to take charge of the lands or collections without an *amilnama* or written commission signed by such proprietor. Reg. VIII of 1793, s. 53.

A proprietor may make a grant of land free of rent, but such grant shall be binding only upon the grantor or his heirs or any person claiming through him or them. B. L. R. F. B. 774.

Explanation :—The term "proprietors" in this article includes *ghatwals* in the district of Birbhum who pay the revenue of their lands direct to Government under the provisions of Regulation XXIX of 1814, and, when any of such *ghatwali* lands is under the superintendence of the Court of Wards or otherwise subject to the direct control of the officers of Government, it includes the Court of Wards or the Commissioner. But no lease of *ghatwali* lands for any period extending beyond the lifetime or incumbency of the grantor shall be valid and binding on the successors of the grantor unless it be a lease of the kind hereinbefore specified in clause 5 of Article 7. Act V of 1859, ss. 1 and 2.

ARTICLE **14.**

Persons obtaining proprietary right or management of estates to register their names within six months.

Every person succeeding to any proprietary right in an estate by purchase, inheritance, gift or otherwise; every joint proprietor of an estate assuming charge of such estate or of any interest therein on behalf of the other proprietors thereof; Act VII (B.C.) of 1876, s. 42.

and every person assuming charge of an estate or of any interest therein shall within six months from the date of succession or assumption of charge make application according to the provisions of Act VII of 1876 of the Bengal Council for the registration of his name and of the character and extent of his interest as such proprietor or manager in the General Register maintained under the provisions of the said Act.

ARTICLE **15.**

No person bound to pay rent in excess of recorded interest of claimant.

No tenant is bound to pay rent to any person claiming such rent as proprietor or manager of an estate in respect of which such person is required by Act VII of 1876 of the Bengal Act VII (B.C.) of 1876, s. 78.

Council to cause his name to be registered, or as mortgagee, unless the name of such claimant has been registered under the aid Act:

and no person liable to pay rent to two or more such proprietors, managers, or mortgagees holding in common tenancy is bound to pay to any one such proprietor, manager, or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager, or mortgagee is registered bears to the entire estate.[8]

Act VII (B.C) of 1876, section 79.

Indemnity to persons paying rent to registered proprietor, manager, or mortgagee.

The receipt of any proprietor, manager, or mortgagee whose name and the extent of whose interest is registered under the said Act shall afford full indemnity to any person paying rent to such proprietor, manager, or mortgagee.

ARTICLE 16.

Regulation V of 1812, section [illegible].

District Judge may in case of dispute appoint Manager of joint undivided estate.

In any case in which it is shown to the satisfaction of a District Judge that inconvenience to the public or injury to private rights has ensued or is likely to ensue from disputes subsisting among the proprietors of a joint undivided estate, it shall be competent to such Judge upon the application of the Revenue Authorities or of any individual having an interest in such estate to appoint a person duly qualified and under proper security to manage the estate, that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate.[9]

Regulation V of 1812, section 27.

And may remove such manager.

It shall also be competent to such Judge to remove such manager, if the Revenue Authorities or any individual having an interest in the estate be at any subsequent time dissatisfied with his conduct, and, representing the circumstances of the case, move such Judge for his removal.

[8] What is the meaning of "liable to pay rent to two or more such proprietors," &c.? Does it mean liable to pay them jointly? If so, one proprietor is not entitled to collect his share of the rent separately (I. L. R. 4 Calc. 89). If the tenant has usually or by contract paid the co-sharers separately in shares of rent not proportioned to their shares of interest, why should the Legislature interfere where such interference is not necessary to effectuate the object of the Act? For example A and B are joint proprietors, each having an eight-anna share. By mutual arrangement, although there has been no partition by metes and bounds, some ryots pay the whole of their rent to A, while others pay the whole of theirs to B, the arrangement being so regulated that A gets half of the whole rents of the estate, and B the other half. This arrangement is a common one to prevent disputes. If A and B have truly registered their interests, there can be no advantage in interfering with it.

[9] The powers of the manager are not defined; there is no provision for notifying his appointment to the tenants, and making his receipts a valid acquittance for the rents. This fragment of law might be well extended and made effective.

ARTICLE **17.**

Classification of the different kinds of tenancy.

For the purposes of this Digest persons having interests in land other than proprietary interests are divided into the following classes, that is to say—

I.—Tenure-holders;
II.—Undertenure-holders;
III.—Ryots having a right of occupancy and entitled to hold at fixed rates of rent;
IV.—Ryots having a right of occupancy, but not entitled to hold at fixed rates of rent;
V.—Ryots not having a right of occupancy;
VI.—Under-ryots.

SECTION II.—*Of Tenures and Tenure-holders.*

ARTICLE **18.**

Tenures how made transferable and heritable.

Of tenures, some are transferable, others are non-transferable; some are heritable, others are non-heritable. A tenure may be made transferable or heritable (1) by express provision of law; (2) by contract; or (3) by custom or the course of dealing therewith. Whether any particular tenure has or has not been made transferable or heritable by contract, or by custom or the course of dealing therewith is a question to be decided upon relevant evidence by the court having jurisdiction.

(1) As *patni* tenures by Reg. VIII of 1819, s. 3, cl 1.
(2) L. R. 4, I. A. 223: Marsh. 330: 9 W. R. 65: 19 W. R. 141.
(3) 1 W. R. 153: 10 Moo. In. Ap 191: 11 Moo In. Ap. 433: 12 Moo In. Ap. 263: 14 Moo. In Ap. 247: L. R. 4 I. A. 223: 24 W. R. 176: 7 B. L. R. 211.

Explanation I.—A tenure may be transferable without being mokurrari or held at a fixed rent: and a tenure may be mokurrari or held at a fixed rent without being transferable.

1 W. R. 5.

Explanation II.—A tenure may be transferable without being heritable: and a tenure may be heritable without being transferable.

Marsh. 119. Reg. XXIX of 1814, s. 2.

Explanation III.—A tenure may be istemrari or permanent without being transferable[1]: and a tenure may be transferable without being istemrari.

Marsh 117: 6 B. L. R 652.

Explanation IV.—A mokurrari istemrari tenure shall be presumed[2] to be heritable.

3 B. L. R. 226: 5 B. L. R. 652.

ARTICLE **19.**

Dependent taluks held from the time of the Permanent Settlement protected from enhancement save on certain grounds.

No dependent talukdar, who has held his taluk from the time of the Permanent Settlement, is liable to have the rent of such taluk enhanced, whether on the ground that its area has been increased by alluvion or otherwise,[a]

Reg. VIII of 1793: s. 51, cl. 1: 8 W. R. Act X, 26: 8 W. R. 496: 20 W. R. 459: L. R. 2 I. A. 196.

[a] 8 W. R. 427: 9 W. R 379: and see 19 W. R. 144.

[1] A farm is a non-transferable and non-permanent tenure (section 22 of Act X of 1859: section 23 of Act VIII (B.C.) of 1869). A *ghatwali* tenure is non-transferable and permanent.

[2] i.e. unless and until it is disproved to be so (see section 1 of the Evidence Act).

save and except upon proof (1) that the proprietor under whom he holds is entitled to enhance either (*a*) by the special custom of the district, or (*b*) by the conditions under which the taluk is held; or (2) that the talukdar by receiving abatements from his rent has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

13 Moo. In. Ap. 248: 21 W. R 439.

Explanation I.—In order to entitle a talukdar to the benefit of this provision, it is sufficient to show that his taluk existed and was capable of being registered at the time of the Decennial Settlement, even though it were not actually registered.

12 B. L. R. 232.

Explanation II.—Kadimi ryots are not dependent talukdars within the meaning of this Article.

I. L. R. 3 Calc. 262.

Explanation III.—A Khurukpore Ghatwal is a dependent talukdar within the meaning of this Article.

ARTICLE **20.**

Act VIII (B.C) of 1869, s. 16: Act X of 1859, s. 15.

Dependant talukdar, &c., holding land at fixed rent not changed since Permanent Settlement, not liable to enhancement.

Notwithstanding anything contained in the Article next preceding, no dependent talukdar, or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the ryot, who, in any province to which the provisions of this Digest may apply, holds his taluk or tenure (otherwise than under a terminable lease[b]) at a fixed rent which has not been changed from the time of the Permanent Settlement of Bengal, Behar, and Orissa,[a] shall be liable to any enhancement of such rent.

[b] L. R. 2 I. A. 196.

[a] 3 W. R. Act X, 20.

8 B. L. R. 280.

Explanation.—A surburakari tenure in Cuttack is a permanent transferable interest within the meaning of this Article.

ARTICLE **21.**

Act VIII (B.C.) of 1869, s. 17: Act X of 1859, s. 16.

Rent of talukdar, &c., not changed for twenty years, to be *primâ facie* evidence of holding at that rent since Permanent Settlement.

Whenever, in any suit under these provisions, it shall be proved that the rent at which a taluk or other tenure is held in the said provinces has not been changed for a period of twenty years before the commencement of such suit, it shall be presumed that such taluk or tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

12 B L R 62. L. R 2 I. A. 203.

Explanation.—Evidence that a taluk or tenure was created at a time subsequent to the Permanent Settlement is evidence of "the contrary" within the meaning of this Article.

ARTICLE **22.**

Notice a condition precedent to enhancement of rent of dependent talukdar, &c.

No dependent talukdar or other person possessing a permanent transferable interest in land between the proprietor and the ryot, who holds land without a written engagement or under a written engagement not specifying the period of such engagement, or whose engagement has expired or become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held by him is situate and has not been renewed, shall be liable to pay enhanced rent unless a notice shall have been served upon him, in districts where the Fuslee year prevails, in or before the month of Jeyt, and in districts where the Bengali year prevails, in or before the month of Pous, specifying the rent demanded for the ensuing year and the ground on which enhancement is claimed.

Act VIII (B.C.) of 1869, s 14: Act X of 1859, s. 13: 11 Moo. In. Ap. 432: 14 W. R. 251: 21 W. R. 439, 441: I. L. R. 2 Calc. 125: 7 B. L R. Appen. 45 *note*, 47 *note*.

ARTICLE **23.**

Measure of enhancement in the case of dependent talukdars, &c.

In any case in which the rent of a dependent talukdar or other person possessing a permanent transferable interest in land intermediate between the proprietor and the ryot is liable to enhancement, such rent may be enhanced up to the limit of the prevailing rate payable by the holders of similar tenures in the neighbourhood; or, where no such prevailing rate is easily ascertainable, up to such a limit as shall not exceed ten per centum of the collections after deducting the expenses of collection.[3]

2 Board's Rep. 749: 11 Moo. In. Ap. 433: 3 B. L. R. A. C. 270: 19 W. R. 144: 1 W. R. 339

ARTICLE **24.**

Abatement of rent of dependent talukdars, &c.

A dependent talukdar or other person possessing a permanent transferable interest in land intermediate between the proprietor and the ryot is entitled to claim an abatement of the rent previously paid by him, if the area of the land for

Marsh. 558: 1 W. R. 299: 2 W. R. Act X, 30, 65: W. R. Sp. No. Jan.-July, 1864, p. 42: 1 B. L. R. A. C. 87: 16 W. R. 279.

[3] It will be remembered that Article 2 saves custom—see. 2 Sel. Rep. 55. Section 8 of Reg. V of 1812 contained the following rule as to the rate at which auction-purchasers might collect:—"In the case of a dependent talukdar, if the rent of the lands be computed according to the rates payable by ryots or cultivators for land of a similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the jumma of such dependent taluk at the rate of 10 per cent. for the talukdar's profit or income over and above a reasonable allowance for charges of collection according to the extent of the taluk." This section was repealed by Act X of 1859, which however contains no rule as to the grounds or limits of enhancement of the rent of tenure-holders and undertenure-holders. This is an omission that should be supplied, and the burden of legislating on the subject should be taken off the courts. In the case at 3 B. L. R. A. C 270, only 6½ per cent. was allowed.

which he paid such rent has been diminished by diluvion or otherwise: but any dependent talukdar or other such person aforesaid, who receives an abatement on account of land lost by diluvion, shall be liable to enhancement for land gained by alluvion.

Reg. VIII of 1793, s. 51, cl. 2.

ARTICLE **25.**

Registry of transfers of taluks and permanent transferable intermediate interests.

Act VIII (B.C.) of 1869, s. 26 : Act X of 1859, s. 27, with the omission of the paragraph in the note below.[4]

All dependent talukdars and other persons possessing a permanent transferable interest in land intermediate between the zemindar and the cultivators,[3] are required to register in the sheristah of the zemindar or superior tenant, to whom the rents of their taluks or tenures are payable, all transfers of such taluks or tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions;[5] provided that no zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing[6] of the zemindar or superior tenant.

3 W. R. Act X 165 : 3 B. L. R. A. C 349.

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[3] Why have these words been substituted for "intermediate between the proprietor of an estate and the ryot" in Article 20? I have reproduced the sections of the law unaltered. Does the change of phraseology point to a cultivator below the ryot in the mind of the Legislature? The cases are to the effect that a *ryoti* holding need not be registered even though it be sublet to actual cultivators (7 W. R. 15 : 10 W. R. 101).

[4] "If any zemindar or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferree or successor may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act; and, if no sufficient grounds are shown for the refusal, shall pass an order enjoining the zemindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession." These words occur before the proviso in the section of Act X, but were omitted in the section of Act VIII, being probably thought unnecessary, because, the right being given, the remedy by action follows according to the usual rule—*ubi jus, ibi remedium*.

[5] There is no sanction to enforce these provisions, so far as the tenant is concerned, as the law provides no express penalty for failure to register and the courts will not visit non-registration with forfeiture (8 W. R. 96). At the same time the purchaser, who omits to register, undergoes some risk. In the Full Bench case at 21 W. R. 94, A had purchased at an execution sale the right, title, and interest of B in a transferable tenure: but had taken no steps to register his purchase. The landlord sued B for rent, obtained a decree, brought to sale in execution thereof and had sold the tenure itself, after A's purchase but 19 days before it was confirmed. It was held that A could not succeed in a suit to obtain possession of the tenure. It was said:—"The person who has obtained a transfer, which he has not registered, and cannot show a sufficient cause for not registering, is bound by the sale and cannot set up a title which he has acquired by a previous sale." There is however a *consensus* of opinion that the utility of these provisions is destroyed by the want of some procedure to compel the tenant to register. In the case of *patni* tenures the law (Regulation VIII, of 1819, section 7) provides a sufficient procedure, by enabling the zemindar to send a *sazawal* and attach.

[6] There are some cases which (if rightly reported) appear to substitute consent by conduct for the writing, which the law expressly requires.

ARTICLE **26.**

Reg. VIII of 1819, ss 1 and 3.

Legal incidents of a patni taluk

A patni taluk is a tenure held at a rent fixed in perpetuity, heritable, capable of being transferred by sale, gift, or otherwise at the discretion of the holder, answerable for his personal debts and subject to the process of the Civil Courts in the same manner as other immovable property.[7] A patni taluk is not liable to be cancelled for default in payment of the rent thereof, but the tenure may be brought to sale by public auction and the defaulting patnidar is entitled to any surplus proceeds of sale beyond the arrears of rent due thereupon. A patni talukdar is entitled to let out the lands composing his taluk in any manner most conducive to his interest, and any engagements entered into by such talukdar with others are legal and binding between the parties to the same, their heirs and assignees[8]: provided, however, that no such engagement shall operate so as to prejudice the right of the proprietor to hold the patni taluk answerable for any arrear of his rent in the state in which he granted it, and free of all incumbrance resulting from the act of his tenant, the patnidar.

Right to sublet.

3 B L. R. A. C. 437: 2 Sev. 173: 13 B. L. R. 409: L R. 1 I. A 178.

Explanation.—In any case in which the interest in land created by a lease is therein denominated a patni taluk, it shall be presumed that a tenure with the incidents specified in this Article is intended.

ARTICLE **27.**

Reg. VIII of 1819, s. 5.

Proprietor not to refuse to give effect to transfer of patni taluk.

The right of alienation having been declared to vest in the holder of a patni taluk, it shall not be competent to the proprietor to refuse to register, and otherwise to give effect to such alienations by discharging the party transferring his interest from personal responsibility and by accepting the engagements of the transferree.

But may demand fee.

In conformity, however, with established usage, the proprietor shall be entitled to exact a fee upon every such alienation; and the rate of the said fee is hereby fixed at two per cent. on the jumma

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[7] A patni taluk is now generally regarded as devisible also. At least it is in these Provinces commonly devised without objection.

[8] The fact of a legislative enactment being thought necessary to enable a patni lessee to grant a sublease seems to show that subletting was not usual, or that there was no rule like that of the English common law under which a lessee, unless restrained by covenant, may grant a sublease of any term less than his own.

or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account.

and security.

The proprietor shall also be entitled to demand substantial security from the transferree or purchaser, to the amount of half the jumma or yearly rent payable to him from the tenure transferred; the condition of furnishing such security and requisition being understood to be one of the original liabilities of the tenure. Until the transfer has been registered or the transferree or purchaser has been accepted by the proprietor, the transferrer is not discharged from liability.

2 Hay's Rep. 14: 2 W. R. 282: 2 B. L. R. A. C. 131: 13 B. L. R. 157: 13 Moo. In. Ap. 160.

The above rule shall apply equally to the case of a sale made in execution of a decree or judgment of court, as to all other alienations, but it shall not apply to the case of sale, for an arrear of the rent due to the zemindar or other superior, under the rules hereinafter contained. The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.

ARTICLE **28.**

Reg. VIII of 1819, s. 6.

Proprietor may refuse sanction to transfer, till fee and security be tendered.

It shall be competent to the proprietor to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted: provided, however, that if the security tendered by any purchaser or transferree should not be approved by the zemindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zemindar to accept it and give effect to the transfer without delay. No appeal shall lie from the order of the Civil Court issuing such injunction.

Sufficiency of security, if contested, to be determined by Civil Court.

I. L. R. 1 Calc. 383.

It is hereby provided that the rules of this and of the preceding Article shall not be held to apply to transfers of any fractional portion of a patni taluk, nor to any alienation other than of the entire interest; for no apportionment of the proprietor's reserved rent can be allowed to stand good, unless made under his special sanction.

ARTICLE **29.**

In case of the sale of a patni tenure in execution of a judgment of court, if the purchaser do not, within the period of one month from sale, conform to the rules of Article 27, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the proprietor shall be entitled, of his own authority, to send a sazawal to attach and hold possession of the tenure, until the forms prescribed be observed. Reg. VIII of 1819, s. 7.

Upon public sale, if security not tendered within one month, proprietor may attach.

In case also of the sale of a patni tenure for arrears of the rent due upon it, under the provisions hereinafter contained, if security be required by the proprietor, and the purchaser fail to furnish the same within one month of the date of sale, the proprietor shall similarly be entitled to send a sazawal to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given.

Attachments made under this Article shall be regarded as trusts for the benefit and at the risk of the purchasers: consequently, after deducting the rent due and the expense of attaching, any surplus that may be yielded by the collections shall be held in deposit for such purchaser; but if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the proprietor making the attachment shall be received as *primâ facie* evidence to warrant process for an arrear so accruing.[9]

Attachment to have effect of trust.

ARTICLE **30.**

A tenure-holder, unless restrained by custom or by the express terms of the contract between him and the proprietor, is entitled to the same rights,[1] and to exercise in respect of the undertenure-holders and ryots within his tenure the same powers as a proprietor, subject however to the conditions contained in Article 13 of this Digest. Marsh. 28 (but *see* W. R. Jan.-July 1864, p. 212): Marsh. 331: 1 W. R. 113: 9 B. L. R. 125: 15 W. R. 411: I. L. R 2 Calc. 474.

Reg. VIII of 1793, s. 65.

Tenure-holder has same rights and powers as proprietor unless restrained by custom or contract.

[9] The provisions for registering transfers of patni taluks and the provisions for registering transfers of dependent taluks and other permanent intermediate interests can easily be amalgamated and reduced to uniformity in the Consolidating Bill.

[1] He is not however subject to the same liabilities. For example, he is not liable to pay the zemindari dâk charges, unless he has contracted with the proprietor for their payment (6 W. R. 100: 8 W. R 45, 517: 4 R. C & C. R. 247: 3 W. R. S. C. C. Ref. 17, 19: 4 W. R. 6: 9 W. R. 518).

ARTICLE **31.**

Act XI of 1859, s. 9.

Tenure-holder may pay Government revenue to prevent his tenure being avoided by sale for arrears thereof.

A tenure-holder may, in order to prevent his tenure from being avoided by a sale for arrears of Government revenue, deposit with the Collector or other person duly authorized to hold such sales the amount of any arrear of revenue due, to be credited in payment of such arrear at sunset of the latest day of payment, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate.

If the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect his tenure, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

SECTION III.—*Of Under-tenures and Undertenure-holders.*

ARTICLE **32.**

Is 30? (see 2 W. R. 158.)

Articles 18, 20, 21, 22, 23, 24, and 25 applicable to undertenures.

The provisions of Articles 18, 20, 21, 22, 23, 24, and 25 are applicable, *mutatis mutandis*, to under-tenures and undertenure-holders.

ARTICLE **33.**

Reg. VIII of 1819, ss. 1 & 4.

Rights and immunities of darpatnidars, sepatnidars, &c.

5 W. R. Mis. 51.

When the holder of a patni taluk underlets in such a manner as to convey a similar interest to that enjoyed by himself, the holder of such under-tenure shall be deemed to have acquired all the rights and immunities declared in Article 26 to attach to patni taluks in so far as concerns the grantor of such under-tenure. The same construction shall also hold in the case of patni taluks of the third or fourth degree. The provisions of Articles 27, 28, and 29 are applicable to patni taluks of the second, third, and fourth degree.[2]

[2] This is clear from the phrase "holder of a patni taluk" and the words "other superior" in the first sentence of section 5 of the Regulation. "Holder of a patni taluk" includes clearly holders of patni taluks of the first and second degree, &c. (see the concluding portion of section 4).

Definition.—A patni taluk of the second degree is termed a "darpatni:" a patni taluk of the third degree is termed a sepatni: a patni taluk of the fourth degree is termed a chahar-patni.

ARTICLE 34.

The provisions of Article 31 are applicable, *mutatis mutandis*, to the holder of an under-tenure in any tenure, the term "tenure" meaning for the purposes of this Article any fishery or any interest in land (whether rent-paying or lakheraj) other than a revenue-paying estate, which by the terms of the grant creating such fishery or such interest, or by the custom of the country is transferable, whether such fishery or such interest is resumable or not, and whether the right of selling or bringing it to sale for an arrear of rent may or may not have been specially resumed by stipulation in any instrument.

Act II (B.C) of 1871 read with Act XI of 1859, s. 9, and definition of "tenure" in s. 1. Act VII (B.C.) of 1868.

Undertenure-holder may pay Government revenue due on tenure to prevent his under-tenure being avoided by sale for arrears thereof.

ARTICLE 35.

In the following cases, that is to say—

(1) when a tenure, upon which the right of selling or bringing to sale for an arrear of rent has been specially reserved by stipulation in the engagements interchanged on the creation of such tenure, is about to be sold for arrears of rent due thereupon under the procedure hereinafter provided for the sale of such tenures either in a summary manner without a decree, or in execution of a decree[a]:—

[a] L. R. 1 I. A. 189.

(2) when a tenure, which by the title-deeds or the custom of the country is transferable by sale, is about to be sold in execution of a decree for arrears of rent due in respect thereof:—

Act VIII (B.C.) of 1869, s. 59: Act VIII (B.C.) of 1865, s. 4.

the holders of under-tenures of the first degree within the tenure so about to be sold may, in order to protect their under-tenures from avoidance by the sale of the tenure, pay into court or to the officer holding the sale the amount, for the realization of which the tenure is about to be sold; and on such payment being made the sale shall be stayed.

Reg. VIII of 1819, s. 13, cl. 1 and 2: Act VIII (B.C.) of 1869, s. 62: Act VIII (B.C.) of 1865, s. 6.

Undertenure-holders may, in order to protect their under-tenure from avoidance by sale, pay the arrears of rent, for which tenure is about to be sold.

In case (1) the undertenure-holders of the first degree have further the following rights[3]:—

Reg. VIII of 1819, s. 13, cl. 2.

(*a*) They may lodge money antecedently for the purpose of eventually answering any demand that may remain due on the day fixed for the sale of the tenure; and, should the amount lodged be sufficient, the sale shall not proceed, but, after making good to the proprietor the amount of his demand, any excess shall be paid back to the person who lodged it.

Reg. VIII of 1819, s. 17, cl. 4, 5, and 6.

(*b*) If the tenure be sold, and if there remain any surplus after satisfying the proprietor's demand from the sale proceeds, such surplus shall be forthwith sent by the officer conducting the sale to the Government Treasury, to be held in deposit to answer the claims of the talukdars of the second degree, or of others who by assignment of the defaulter may be at the time in possession of a valuable interest on the land composing the taluk sold, or any part of it. It shall be competent to any one conceiving himself to possess such an interest, to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale.

Under-tenants free to sue for price of their interest or compensation.

If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances. If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

[3] These rights (*a*) and (*b*) do not belong to undertenure-holders in case (2). But in case (2) any one interested may stop the sale by paying the arrears (Act VIII (B.C.) of 1865, s. 6: Act VIII (B.C.) of 1869, s. 62), whereas in case (1) this privilege is confined to undertenure-holders of the first degree. There is no reason why the law should not be uniform.

Suit not to lie if under-tenant be himself in arrear at time of sale.

Provided however that no talukdar of the second degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior taluk, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

ARTICLE **36.**

In any case in which an undertenure-holder of the first degree has paid money under the Article next preceding in order to protect his under-tenure, if the amount so lodged be rent due by the inferior talukdar to the holder of the tenure about to be sold, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him by the proprietor of the advertised tenure on account of the year or months for which the notice of sale may have been published.

Procedure if amount lodged be rent due from undertenant.

Reg. VIII of 1819, s. 13, cl. 3 and 4: Act VIII (B C.) of 1869, s. 62: Act VIII(B.C.)of 1865, s. 6: 4 B. L. R. F. B. 77.

If the person making such a deposit, in order to stay the sale of the tenure, shall have already paid the whole of the rent due from himself, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluk so preserved shall be the security to the person making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage; and he shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto.

Procedure if amount lodged be an advance from private funds.

If the defaulter shall desire to recover his tenure from the hands of the person who, by making the advance, has acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced with

interest at the rate of 12 per cent. per annum up to the date of possession having been given as above, or upon exhibiting proof in a regular suit to be instituted for the purpose, that the full amount so advanced with interest has been realized from the usufruct of the tenure.

SECTION IV.—*Of Ryots having a Right of Occupancy and entitled to hold at Fixed Rates.*

ARTICLE **37.**

Act VIII (B.C.) of 1869, s. 3: Act X of 1859, s. 3.

Ryots holding land at fixed rates to receive pottahs at those rates.

Ryots who, in any province to which the provisions of this Digest apply,[4] hold lands at fixed rates of rent, which have not been changed from the time of the Permanent Settlement of such province,[5] are entitled to receive pottahs at those rates.

B. L. R. F. B. 326: 6 B. L. R. Appen. 26: I. L. R. All. 301 (Full Bench): *contra*, 4 W. R. Act X, 23: 8 W. R. 170.

Explanation I.—In the case of rent payable in kind, a fixed proportion of the produce is a fixed rate within the meaning of this Article.

1 Board's Rep. 169: 2 W. R Act X, 93: 3 W. R. Act X, 135: 5 W. R. Act X, 53: 10 W. R. 117, 429: 20 W. R. 419: 1 B. L. R. s. n. 8.

Explanation II.—The operation of this Article is not affected by the fact of the land having been demised to different persons, or transferred, or separated from other land which formed with it a single holding, or amalgamated with other land into one holding, if only the rate of rent have not been altered thereby.

ARTICLE **38.**

Act VIII (B.C) of 1869, s. 4: Act X of 1859, s. 4.

Presumption if rent of land have not been changed for 20 years before suit.

Whenever, in any suit to which the provisions of this Digest are applicable, it shall be proved that the rent at which land is held by a ryot in any such province has not been changed for a period of twenty years before the commencement of such suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

Marsh. 68, 403: 2 W. R. Act X, 30: 3 W. R. Act X 162: 4 W. R. Act X, 43: 6 W. R. Act X, 58: 7 W. R. 242, 472: 3 B. L. R. Appen. 88: 6 B. L. R. Appen 120.

Explanation.—In order that the Court should raise this presumption, it is not necessary that a ryot should plead in express terms that the land has been held from the time of the Permanent Settlement at a rent which has not been

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[4] In Act X of 1859 "in the Provinces of Bengal, Behar, Orissa, and Benares."

[5] The words "of such province" do not occur in Act X of 1859; and it was held that "permanent settlement" in that Act meant the permanent settlement of Bengal, Behar, and Orissa, and not the permanent settlement of the particular estate, which may have been subsequently made (3 W. R., Act X, 20).

changed since that time, if only his case contain no allegation inconsistent with its having been so held.

ARTICLE **39.**

In the following cases; that is to say,—

(1)—in the case of the sale for arrears of its own revenue of a revenue-paying estate in a permanently-settled district: Act XI of 1859, s. 37, proviso: 5 W. R. Act X, 16: 7 W. R. 176 (Full Bench) 1 Ind. Jur. N. S. 77.

(2)—in the case of the sale for arrears of its own revenue of a transferable tenure as defined in Article 12, paragraph 11: Act VII (B.C.) of 1868, s. 12: 6 W. R. Act X, 15.

(3)—in the case of the sale for arrears of its own revenue of a revenue-paying estate in a district not permanently settled: Act XI of 1859, s. 52 proviso.

(4)—in the case of the sale for arrears of its own rent of a tenure upon which the right of selling or bringing to sale for an arrear of rent was specially reserved by stipulation in the engagements interchanged on the creation of the tenure: Reg. VIII of 1819, s. 11: 1 R. J. & P. J. 109.

(5) -in the case of the sale in execution of a decree for arrears of its own rent of a tenure or under-tenure transferable by its title deeds or by the custom of the country: Act VIII (B.C.) of 1869, s. 66: Act VIII (B.C.) of 1865, s. 16.

ryots holding land at fixed rates of rent, which have not been changed, or which under Article 38 must be presumed not to have been changed, from the time of the Permanent Settlement, are protected from ejectment and enhancement of their rent by the purchaser of the estate, tenure, or under-tenure.

Ryots holding at fixed rates, protected from ejectment and enhancement upon sale of estate, tenure, or under-tenure for arrears of revenue or rent.

SECTION V.—*Of Ryots having a Right of Occupancy, but not entitled to hold at Fixed Rates.*

ARTICLE **40.**

Every ryot, who shall have cultivated or held land as a tenant[a] for a period of twelve years, shall have a right of occupancy in the land so cultivated or held by him whether it be held under pottah or not,[b] so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, nij-jote, or seer land belonging Act VIII (B.C.) of 1869, s. 6: Act X of 1859, s. 6.

Right of occupancy acquired by cultivating or holding land for 12 years.

[a] Holding as a trespasser would not confer the right, W. R. Sp. No. 146: 2 W. R. Act X, 85: 10 B. L. R. Appen. 5: 13 W. R. 333: 17 W. R. 383: 19 W. R. 177.

[b] 8 B. L. R. 165; S.C. 17 W. R. 62.

[c] It may be observed that the right to avoid subordinate interests applies in all the five cases to interests created after *settlement* or after the creation of the superior interest. The provisions of the law (s. 3, Article 37) are general and without exception.

to the proprietor of the estate or tenure, and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to lands sub-let[7] for a term, or year by year, by a ryot having a right of occupancy. The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this Article.

Act VIII (B.C.) of 1869. s. 7 : Act X of 1859, s. 7.

Saving of terms of written contracts.

Nothing in this Article shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot, when it contains any express stipulation contrary thereto.

9 W. R. 579 : 1 W. R. 71.

Explanation I.—A person holds land within the meaning of this Article when the cultivation thereof is carried on at his risk, on his behalf, by the members of his family, by servants, or by hired labourers.[8]

19 W. R. 338 : I. L. R. 3 Calc. 560 : 1 C. L. R. 388.

Explanation II.—A ryot may cultivate or hold land as a tenant so as to acquire a right of occupancy under this Article although the person, under whom as landlord he cultivates or holds, has no title in the land so cultivated or held.

L. R. 5. I. A. 168 : 1 W. R. 76 : 25 W. R. 503, 556 : W. R. Jan.-July 1864, Act X, 77.

Explanation III.—A person holding land as an ijarahdar or farmer of rents does not by such holding acquire a right of occupancy : but a right of occupancy once acquired in land will not be lost by subsequently holding such land in farm.

L. R. 5 I. A. 168 : and see 7 W. R. 493, and 25 W. R. 350.

Explanation IV.—A right of occupancy may be acquired in respect of an undivided share of an estate.

3 B. L. R. Appen. 138 : 23 W. R. 288.

Explanation V.—A right of occupancy may be acquired in khamar, nij-jote, or seer land by a tenant cultivating or holding otherwise than on lease for a term, or year by year. A proprietor cannot acquire a right of occupancy in such land forming a portion of his own estate.

7 W. R. 40 : 15 W. R. 431.

22 W. R. 23, 27 : 23 W. R. 237 : 7 W. R. 398 : 15 W. R. 153 : 17 W. R. 179.

Explanation VI.—In the case of the transfer of a holding, the period during which the transferrer has held cannot be combined with the period during which the transferree has

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[7] The Legislature here recognizes the right of a ryot, who has a right of occupancy, to sublet his land ; and he will not incur a forfeiture by subletting (9 W. R. 344 : 10 W. R. 113 : 12 W. R. 110, 451 : 1 B. L. R. A. C. 81) : but he cannot by subletting alter the character of his holding and convert it into an under-tenure (7 W. R. 16. 114). If a man take land and at once sublet it, he will be a middleman and cannot acquire a right of occupancy (W. R. 71 : Marsh. 479) ; but if, having once acquired a right of occupancy by cultivating or holding, he afterwards sublet, such right of occupancy is not thereby forfeited.

[8] The law appears to contemplate the same land being held throughout the twelve years. In some parts of Behar the plots cultivated by each ryot are changed annually, but so as that the total quantity of land held by him every year is the same, or nearly so. It has been said that this is done in order to prevent the ryots from acquiring a right of occupancy. If the practice be an usual one, the Legislature could easily take it into account and provide for the acquisition of a right to occupy land not on the average less in quantity or worse in quality than had been occupied during the previous twelve years.

held for the purpose of making up the twelve years required by this Article.

ARTICLE 41.

Meaning of 'right of occupancy.'

A right of occupancy is the privilege of continuing to hold the land, in which such right has been acquired, as long as the rent legally demandable for the same is paid. 22 W. R. 24, 27 · S. C. 13 B. L. R. 274.

Right of occupancy *per se* not transferable.

A ryot's holding, not transferable by custom or otherwise, does not become transferable in consequence of the ryot acquiring a right of occupancy therein.[9] 7 W. R. 528 (F. B.): 2 B. L. R. Appen. 37 : 3 B. L. R. Appen. 35 . 11 W. R. 405.

Consequence of unauthorized transfer.

When a ryot having a right of occupancy transfers his holding without the consent[1] of his landlord in any case in which such holding is not so transferable by custom or otherwise, he does not merely by such unauthorized transfer forfeit his right of occupancy, so long as he continues to pay the rent: but he is not discharged from liability to his landlord, and his transferree acquires no rights against such landlord and may be treated by him as trespasser. 11 W. R. 94 : 19 W. R. 99 · 16 W. R. 111 : 2 Agra Rep. 279. 5 W. R. 147 : 12 B. L. R. 84 *note*. 12 B. L. R. 87 : 22 W. R. 26 : 7 W. R. 114 : 5 W. R. 147 · 2 W. R. Act X, 20.

Registry of transfer of ryots holding not necessary.

In any case in which a ryot's holding is transferable, it is not necessary that the transfer should be registered in the sheristah of the landlord.[2] 1 W. R. 86 : 10 W. R. 101 : 11 W. R. 348.

ARTICLE 42.

Ryots having right of occupancy, but not holding at fixed rates, entitled to pottahs at fair and equitable rates.

Ryots having rights of occupancy, but not holding at fixed rates, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Digest. Act VIII (B.C.) of 1869, s. 5 : Act X of 1859, s. 5.

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[9] It has been said that a right of occupancy is heritable; but the law does not say so, and the point has never been decided. In the case at 7 W. R. 528, Peacock, C. J., expressed his own doubts on the subject. There are many holdings, which are heritable by custom or otherwise, quite apart from the effect of a right of occupancy. In order to make up the twelve years necessary to the acquisition of a right of occupancy, the holding of the father or other person from whom a ryot inherits (when he does inherit, or perhaps, in any case in which he is entitled to inherit) may be taken into account: but it does not follow that a holding, which was previously non-heritable, becomes heritable as a consequence of the acquisition of a right of occupancy therein.

[1] He may transfer with his landlord's consent. The fact of the landlord bringing a holding to sale in execution of his own decree for rent is not evidence of a right to transfer without his consent (12 B. L. R. 89).

[2] There is a consensus of opinion that the law should be otherwise.

Act VIII (B.C.) of 1869, s. 9 : Act X of 1859, s. 76.

If, on trial of suit for pottah, parties do not agree as to the term, Court to fix term.

If, on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy, the parties do not agree as to the term for which the pottah is to be granted, the Court shall fix such term as under the circumstances of the case may seem just and proper: provided that the term shall not in any case be longer than ten years, and, in estates not permanently settled, shall not extend beyond the period for which the proprietor of the estate has engaged with Government: provided also that if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest.

Proviso.

ARTICLE 43.

Act VIII (B.C) of 1869, s. 18 : Act X of 1859, s. 17.

Grounds on which ryot having right of occupancy is liable to enhanced rent.

No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds,[3] namely:—

That rate paid by him is below rate prevailing in adjacent places.

1—that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages[4] in the places adjacent:—

That value of land, &c., has increased independently of ryot.

2—that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot:—

That quantity of land held by ryot is greater than he has paid rent for.

3—that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

9 W. R. 83.

Explanation I.—A rate of rent paid by the majority of ryots in the places adjacent is a prevailing rate.

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[3] In the Great Rent Case (B L. R. F. B. 202) some of the Judges expressed an opinion (although the point did not arise in the case) that the rent of a ryot having a right of occupancy cannot be enhanced on any ground save the above three, whether the landlord sue for a kabuliyat or for arrears of rent after service of notice of enhancement. Is the case of alluvion to be regarded as a case of enhancement falling under the third ground? See Privy Council's remarks at 19 W. R. 144. As to enhancement for land gained by encroachment see 22 W. R. 246; and Woodfall 696.

[4] "of a similar description and with similar advantages," at what time? At the time the ryot was let into possession, or at the time of suing for enhanced rent? The former view was taken in the case at 2 W. R. Act X, 40: the latter view was apparently taken in the cases at Marsh. 379: 1 C. L. R. 549: and 7 W. R. 97. If a ryot by his labour and money convert a sandy spot into a fertile field, it may be said that the productive powers of this land were increased by his agency or at his expense. But if the landlord, instead of claiming under the second ground, claim under the first ground, the difficulty indicated arises. As to *jungleburi* holdings, see W. R. Jan.-July 1864, p. 61: 7 W. R. 158.

Explanation II.—Ryots having a right of occupancy are ryots of the same class. 9 W. R 84 6 W. R. Act X, 33.

ARTICLE **44.**

Enhanced rent to be calculated by rule of proportion when value of produce has increased.

In any case in which a landlord can show that he is entitled to enhance the customary rent of a ryot having a right of occupancy on the ground that the value of the produce has been increased otherwise than by the agency or at the expense of the ryot,[5] the productive powers of the land and the cost of production remaining the same,[6] the enhanced rent shall be calculated so as to bear to the previous rent the same proportion that the increased gross value of the produce calculated on the average of three or five[a] normal[b] years bears to the previous gross value calculated on an average of three or five normal years before such value began to be increased. The Great Rent Case, B. L. R. F. B. 202. 7 W. R. 94 9 W. R. 348. [a] 6 B. L. R. Appen. 122. [b] 6 W. R. Act X, 34.

Explanation.—"Customary rent" means a rent fixed according to the rate commonly payable by the same class of ryots for similar land in the places adjacent and representing a share of the gross produce calculated in money. The rent of a ryot shall be presumed to be a customary rent in the absence of evidence to the contrary.[7] B. L. R F B. 218 219, 126, 228, 229, 262, B. L. R. F. B. 228, 244, 266.

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[5] The question referred to and decided by the Full Bench was concerned only with an increase in the value of the produce—see B. L. R. F. B. 206, 226 Mr. Justice Trevor thought that the method of proportion might be applied whether (1) the productive power remaining the same, the value of the produce has increased; or (2) the productive power has alone increased; or (3) the land be proved by measurement to be greater than the quantity for which rent has been previously paid (227). Sir Barnes Peacock, however, confined his answer to the question as put, observing as to the necessity of care lest in answering a general question and treating it as applicable to particular circumstances, the Court should express an opinion which might afterwards be considered as applicable to all cases falling within the general question propounded.

What is meant by "the value of the produce being increased"? Does it mean (*a*) the value—market value generally—of such particular produce as is grown on the land or (*b*) the total value of the total produce produced on the land. In case (*a*) the principle of the Tithe Commutation Acts (see my edition of the Bengal Regulations, page 127, *note*) would supply a rule, the operation of which could not be defeated by the impossibility of obtaining evidence to prove the value of the produce at some remote period of time. In case (*b*) the total value of the total produce might be increased, without a rise in prices, by an increase in the productive powers of the land, and the first-mentioned increase merges in the second.

[6] The value upon which the calculation is to be made is the gross value (but see 6 W. R. Act X, 32). The element, cost of production, is eliminated. Mr. Justice Trevor remarked that the system itself, having once fixed the proportion for which the ryot is liable to the zemindar, refuses to look at costs of production or matters of detail (226). Mr. Justice Campbell thought there was no danger of the ryot suffering from an increase in cost of production greater in proportion than the increase in value of the produce (265). Mr. Justice Seton-Karr thought that by eliminating all the cost of production, one additional source of confusion and intricacy would be removed. In the case at 7 W. R. 144, the cost of production had increased (contrary to Mr. Justice Campbell's expectation), and Mr. Justice Trevor appears to have changed his mind, for he remanded the case to have this element taken into consideration.

[7] Mr. Justice Trevor says that the rule of proportion formulated in his judgment is not applicable to tenants-at-will or tenants who hold under written engagements in

ARTICLE **45.**

Act VIII (B.C) of 1869, s. 14: Act X of 1859, s. 13.

Enhancement of rent of ryot holding without, or after expiry, &c., of written engagement.

No ryot having a right of occupancy, who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such ryot, in districts or parts of districts where the Fuslee year prevails, in or before the month of Jeyt, and in districts or parts of districts where the Bengalee year prevails, in or before the month of Poos, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed. Such notice shall be served by order of the Collector in whose jurisdiction the lands are situate, on the application of the person to whom the rent is payable, and shall, if practicable, be served personally upon the ryot. If for any reason the notice cannot be served personally upon the ryot, it shall be affixed at his usual place of residence; or if he have no such place of residence in the district in which the land is situate, the mode of service of such notice shall be by affixing it at the mal cutcherry of such land or other conspicuous place thereon, or at the village chowree or chowpal, or at some other conspicuous place in the village in which the land is situate.

In Act X of 1859 "in or before the month of Cheyt" for all districts.

Illustration.

3 W. R. Act X, 157, 162: Marsh. 331.

(*a*) A, a proprietor, grants a farming lease of his estate to B, and gives the ryots on such estate notice to pay their rents to B during the term of the lease. While this lease remains in force, notices of enhancement may be served upon such ryots on the application of B, as the person to whom their rents are payable, but not on the application of A.

9 B. L. R. 125.

(*b*) A, a proprietor, serves notices of enhancement upon the ryots on his estate in or before the month of Poos 1284 B.S.; and then grants a farming lease of this estate to B, giving the ryots notice to pay their rents to B. B may sue for enhancement in 1285 upon the notices so served.

4 B. L. R. F. B. 58.

Explanation.—A suit to obtain a kabuliyat at an enhanced rent will not lie unless a notice of enhancement has been previously served in the manner provided in this Article.

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which their rents are based upon data inconsistent with the presumption of the rate being a customary rate. In such cases the re-adjustment must be formed on exactly the same principle as that on which the original written contract was based. In cases in which it appears, from the express terms of the previous contract not still in force, that the rents then made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the ryot to cultivate indigo or other crops, the old rent must be corrected so as to represent the ordinary rate current at the period of the contract before it can be admitted to form a term in the calculation to be made according to the method of proportion (228, 229). See also the remarks of the other Judges at pages 229, 267, 285-6, and 313 of the Report.

ARTICLE **46.**

Notice of enhancement what to contain—when sufficient or otherwise.

A notice of enhancement should set forth clearly and distinctly and (as far as possible) in the words of the law the ground upon which enhancement is claimed in respect of each holding for which it issued[a]: but no such notice shall be held insufficient unless the ryot objects to its sufficiency, because it omits to specify the amount of enhanced rent demanded, or because it sets forth the ground upon which enhancement is claimed so defectively that he does not understand the case which he has to meet, and the Court is of opinion that such objection is well founded and that the ryot has in consequence been misled or prejudiced in conducting his case.

12 W. R. 536 17 W. R. 32, 279, 355, 496 18 W. R. 203 : 20 W. R. 232, 256 21 W. R. 33 6 B. L. R. Appen. 154 7 B. L. R. Appen. 44.

[a] 8 W. R. 252 20 W. R. 146, 404, 479.

ARTICLE **47.**

Ryot having right of occupancy when entitled to abatement of rent.

Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion[s] or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

Act VIII (B C.) of 1869, s. 19 · Act X of 1859, s. 18.

Explanation.—A ryot having a right of occupancy is not entitled to claim an abatement of the rent previously paid by him on the ground that such rent is higher than the prevailing rate paid by ryots of the same class for land of a similar description and with similar advantages in the places adjacent.[9]

21 W. R. 404.

ARTICLE **48.**

In case of sale of superior interest for arrears of rent or revenue, purchaser may not eject, but may enhance rent of, ryot having right of occupancy.

In the cases of sale mentioned in Article 39, the purchaser of the superior interest may not eject a ryot having a right of occupancy; but he may take proceedings to enhance the rent of such ryot upon the grounds set forth in Article 43; and unless such purchaser be the defaulting proprietor, tenure-holder,

Act XI of 1859, ss. 37, 52 Act VII (B.C.) of 1868, s. 12 Reg. VIII of 1819, s 11, cl. 3. Act VIII (B.C.) of 1869, s. 66 Act VIII (B C.) of 1865, s 16 5 B. L R. Appen 19 22 W. R. 133 W. R. Jan.-July 1864 Act X, 111; 12 W. R. 123.

[s] It will be observed that the case of diluvion is here separately and expressly provided for, and that it is not left to fall within the case of the quantity of land being proved by measurement to be less than the quantity for which rent was previously paid. The case of alluvion is not similarly provided for in the enhancement section, and it may be argued that it was not intended to fall within the case of the quantity of land being proved on measurement to be more, but to be governed by clause 1, s. 4, Reg XI of 1825.

[9] It was, however, observed in the Great Rent Case that it could hardly be by mere accident that, while the law declares there shall be no enhancement of the rent of a ryot having a right of occupancy except on one of three grounds, there are no words which limit abatement to the grounds set forth in the law (B. L R F. B. 266).

or undertenure-holder, he shall not be debarred from so proceeding by any agreement between the ryot and such defaulter, save where the right of making incumbrances was vested in such defaulter or his predecessor in title by the written engagement under which the tenure or under-tenure was created.

SECTION VI.—*Of Ryots not having a Right of Occupancy.*

ARTICLE **49.**

Act VIII (B.C.) of 1869, s. 8: Act X of 1859, s. 8.

Ryots not having rights of occupancy are entitled to what pottahs.

Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom the rent is payable. The term of any such pottah shall be exclusively in the discretion of the person entitled to the rent.

Act VIII (B.C.) of 1869, s. 9: Act X of 1859, s. 76, last sentence.

Marsh 326, 341.

Explanation.—A ryot not having a right of occupancy cannot maintain a suit against his landlord to have the rent fixed at which he shall thereafter hold, or to obtain a pottah at a rate to which his landlord has not agreed: nor, in the absence of an agreement between the parties as to the rent to be paid, can a landlord sue such a ryot for a kabuliyat.

2 B. L. R. S N. XV: 4 W. R. Act X, 46: 9 W. R. 595.

ARTICLE **50.**

1 B. L. R. F. B. 29: 13 B. L. R. 471 *note*: I. L. R. 3 Calc. 699: I. L. R. 4 Calc 339: 2 C. L. R. 209.

Ryot not having right of occupancy can be ejected only after reasonable notice to quit.

A ryot cannot against the will of his landlord retain possession of land in which he has not a right of occupancy; but if he has entered into possession otherwise than for a specific term, or having entered for a term has held over with the consent of his landlord, express or implied, he cannot be ejected without service upon him of a reasonable notice to quit.

ARTICLE **51.**

1 B. L. R. F. B. 25.

Enhancement of rent of ryot not having a right of occupancy—limited by what is fair and reasonable.

The rent of a ryot not having a right of occupancy can be enhanced only after service upon him of a notice of enhancement in the manner provided by Article 45. If after such a notice has been served upon him, such ryot elect to remain in possession of the land, he cannot be compelled to pay more than a reasonable rent therefor.

1 B. L. R. F. B. 25: 5 W. R. Act X 41: 11 W. R. 304: 24 W. R. 441.

[1] In the case at 22 W. R. 548, it was held that, if the tenant had received a reasonable notice, *i.e.* a notice served in good time before the expiry of the year, requiring him to quit unless he agreed to pay the higher rent specified in such notice, and after receiving such notice held over, he must be taken to have impliedly agreed to pay the higher rent. In this case, however, the higher rent was found to be under the circumstances reasonable; and there is a difference between such a notice, and a mere notice of enhancement.

ARTICLE **52.**

Ryot not having a right of occupancy not entitled to sue for abatement of rent.

A ryot not having a right of occupancy cannot maintain a suit for abatement of the rent previously paid by him.[2] Marsh. 326, 341.

SECTION VII.—*Of Under-ryots.*

ARTICLE **53.**

Disabilities and rights of Under-ryots.

An under-ryot cannot acquire a right of occupancy in land held or cultivated by him. W. R. Jan.-July 1864, 72, 78 : 6 W. R. 168 : 7 W. R. 81 : 9 W. R. 344 : 1 B. L. R. A. C. 81 : 15 W. R. 469 : 19 W. R. 95.

The interest of an under-ryot is not transferable without the consent of his landlord. I. L. R. 4 Calc. 135.

The provisions of Articles 49, 50, 51, and 52, are applicable to under-ryots.

CHAPTER III.

OF LANDLORDS AND TENANTS GENERALLY.

SECTION I.—*Of the Rights and Duties of Landlords generally.*

ARTICLE **54.**

Landlords bound to grant pottahs to ryots: what particulars to be inserted therein.

Every person to whom the rent of land held or cultivated by a ryot is payable shall, when required by such ryot, grant to him a pottah containing the following particulars:— Act VIII (B.C.) of 1869, s. 2 : Act X of 1859, s. 2.

(*a*)—the quantity [and boundaries] of the land; and, where fields have been numbered in a Government survey, the number of each field: The words in brackets are not in Act X of 1859.

(*b*)—the amount of annual rent:

(*c*)—the instalments in which the same is to be paid:

(*d*)—and any special conditions of the lease:

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[2] But can he, under any circumstances, successfully claim abatement in answer to a suit for arrears of rent simply? Take for example the case of diluvion at W. R. Jan.-July 1864, Act X, p. 42, in which Sir Barnes Peacock said :—"We think, upon principles of natural justice and equity, that, if a landlord lets his land at a certain rent, to be paid during the period of occupation, and the land is, by the act of God, put in such a state that the tenant cannot enjoy, the tenant is entitled to an abatement."

"Or quantity" should be added, as rent payable in kind is not always a proportion.

(*e*)—if the rent is payable in kind, the proportion[a] of produce to be delivered, and the time and manner of delivery.

ARTICLE **55.**

Reg. VIII of 1793, s. 64.

Instalments to be regulated by time of reaping and selling produce.

[b] Sic in the original.

Proprietors, dependent talukdars and farmers of every description are to adjust the instalments of the rents receivable by them from their under-renters[b] and ryots according to the time of reaping and selling the produce.

ARTICLE **56.**

Act VIII (B.C) of 1869, s. 10: Act X of 1859, s. 9.

Person granting pottah entitled to a kabuliyat or counterpart engagement.

Every person who grants a pottah is entitled to receive from the person, to whom the pottah is granted, a kabuliyat or counterpart engagement in conformity with the terms of the pottah. The tender to any ryot of a pottah, such as the ryot is entitled to receive, shall be held to entitle the person to whom the rent is payable to receive a kabuliyat from such ryot.

4 B. L. R. F. B. 58: I. L. R. 3, Calc. 498: 1 C. L. R. 241: 2 C. L. R. 8, 302.

Explanation I.—A landlord is not entitled to maintain a suit for a kabuliyat unless he has previously tendered to the person sued a pottah containing the same essential particulars as he seeks to have inserted in the kabuliyat.

B L. R. F. B. 974: 19 W. R. 262: 1 C. L. R. 241: 3 B. L. R. A. C. 78 *note.*

Explanation II.—When a landlord sues his tenant for a kabuliyat at a particular rent, and fails to prove that he is entitled to such rent as being fair and equitable, he is not entitled to obtain in such suit a decree for a kabuliyat at a less rent, but his suit shall be dismissed.

ARTICLE **57.**

(*a*) Reg. VIII of 1793, s. 55: Reg. V of 1812, s. 3: Reg. VII of 1822, s. 9, cl. 1: Reg. IX of 1825, s. 9: 1 N.-W.-P. Rep. 207: 3 B. L. R. A. C. 44: 5 W. R. Act X, 86: 9 W. R. 300: 10 W. R. 257: 12 W R 29: 14 W. R. 447: 23 W. R. 447: 25 W. R. 252.

(*b*) Act VIII. (B.C.) of 1869, s. 12: Act X of 1859, s. 11.

A landlord may not—

(*a*)—under any pretence whatever, impose on his tenants any new *abwab* or *mathut* not taken into account in fixing the Government revenue, or not sanctioned by ancient custom approved by the Revenue Authorities;

Landlord may not impose abwabs on his tenants;

(*b*)—or compel the attendance of his tenants for the adjustment of their rents or for any other purpose; or adopt any means of compulsion for enforcing payment of rent other than by suit or distress or otherwise under the provisions of this Digest.

or compel the attendance of his tenants, or enforce payment of rent otherwise than according to law.

ARTICLE **58.**

Landlord entitled to make general survey and measurement, unless restrained by contract.

A landlord[3] is entitled, unless restrained from so doing by express engagement with the occupants of the land, to make a general survey and measurement of the lands comprised in the whole or any part of any estate, tenure, under-tenure, or holding, of the rents of which he is in receipt: provided that it shall not be competent to one or more only of two or more sharers in a joint undivided estate to make any such survey and measurement.

Act VIII (B.C.) of 1869, s. 25: Act VI (B.C.) of 1862, part of s. 9.

10 B. L. R. 397; S. C. 91 W. R. 280: 20 W. R. 385.

Illustrations.

(*a*)—A, a proprietor, grants a portion of his estate in patni to B, the patni rent payable to A being fixed at Rs. 500. The ryots, as a necessary consequence, pay their rents to B. Both A and B are entitled to make a general survey and measurement of the lands comprised in the patni lease.

8 W. R 149: 9 W. R. 151: W. R. Jan.-July, 1864, Act X, 105.

(*b*)—A is the proprietor of an estate. B holds lakheraj land situated within the local limits of A's estate. A is not entitled to measure B's lakheraj land.

3 B. L. R. Appen. 27: 10 W. R. 361: 11 W R. 293, 445.

ARTICLE **59.**

Landlord bound to put and maintain tenant in possession.

A landlord is bound to maintain his tenant in the peaceable and quiet possession and enjoyment of the tenure, under-tenure, holding, or land in respect of which the relation of landlord and tenant exists between them, so long as such relation exists. This duty extends only to interruption or disturbance by the landlord or any one claiming under or paramount to him. It does not extend to interruption or disturbance by third parties.

23 W. R. 121: 15 W. R. 230: 14 W. R. 43, 58: 1 B. L. R. A. C. 87.

14 W. R 273: Smith, 285, 286: Woodfall, 629: Fawcett, 229, 231.

In the case of a new letting the landlord is bound, upon the tenant's request, to put him in possession of the property demised.

12 W. R. 149: 11 W. R. 278: 9 W. R. 582: 3. B. L. R. Appen. 119.

ARTICLE **60.**

Co-sharer in undivided property when entitled to collect his share of the rent separately, &c.

When an estate, tenure, under-tenure, or holding is held as an undivided property by two or more co-sharers jointly, to whom as landlords the rent of any tenure, under-tenure, holding, or land therein included is payable

I. L. R. 4 Calc. 96 (Full Bench).

[3] The words of the present law are—"Every proprietor of an estate or tenure, or other person in receipt of the rents of an estate or tenure," &c. There has been some doubt as to whether the words "in receipt of the rents" are to be taken with "proprietor" as well as with "persons"—see 7 W. R. 415: 9 W. R. 331. It is, however, agreed that the proprietor or other person must be *in possession* in order to have the right to make a survey and measurement (4 W. R. Act X. 16: 6 W. R. Act X, 10: 7 W. R. 96). The above wording probably conveys this.

by the tenant thereof, any one of such co-sharers may, with the consent [of such tenant and] of the other co-sharers, but not otherwise,[a] collect separately his share of such rent; and when any such co-sharer has been in the habit of collecting his share of rent separately, he shall be entitled to maintain a suit for the recovery of arrears of such share of rent without making his other co-sharers parties thereto. But no such co-sharer in such undivided property shall be entitled to maintain a suit to obtain a kabuliyat[b] for his undivided share; or to enhance[c] the rent payable for such undivided share.

[a] 25 W. R., 25.

[b] I. L. R. 4 Calc. 96 (Full Bench): 2 B. L. R. A. C 159, Appen. 52 : 8 B. L. R. 251.

[c] I. L. R. 4 Calc. 96 (Full Bench) : 2 C. L. R. 21 : 22 W. R. 385: 17 W. R. 414: 10 W. R. 307 : 12 B. L. R. 290, *note*: 2 B. L. R. A. C. 159, Appen. 52.

Where any such co-sharer has not been in the habit of collecting his share of rent separately[4] [or the tenant has not agreed to pay him such share separately],[5] he shall not be entitled to maintain a suit for the recovery of his share of rent separately; provided that this rule shall not preclude a separate suit by a co-sharer, who has not received his share of rent in consequence of collusion between the other co-sharers and the tenant.

[1] I. L. R. 4 Calc. 90 : 12 B. L. R. 290 *note*; 291 *note*; 293 *note*, 395 : 3 B. L. R. A. C 230 : 2 W. R. 229, 394 : 20 W. R. 76 : 19 W. R. 168 : 15 W. R. 243 : 5 W. R. Act X, 68.

[12] B. L. R. 289 (Full Bench); S. C. 21 W. R. 46 : 23 W. R. 11 : I. L. R. 4 Calc. 350 : 3 C. L. R. 223.

SECTION II.—*Of the Rights and Duties of Tenants generally.*

ARTICLE **61.**

Act VIII (B.C) of 1869, part of s. 11: Act X of 1851, part of s. 10.

Tenants entitled to receipts upon payment of rent. Receipts what to specify.

Every tenant is, upon payment of rent, entitled to a receipt specifying the amount of rent paid and the year or years on account of which such rent is acknowledged to have been paid. A refusal to make such specification shall be held to be a withholding of a receipt.[6]

ARTICLE **62.**

2 W R. 157 : 17 W. R. 416 : 23 W. R. 298 : 2 C. L. R. 294.

Tenant may not permanently change condition of land.

Every tenant is bound to use the land which he holds as tenant in a reasonable manner for the purpose for which it was let or has been customarily used. A ryot may not without

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[4] The proper course is for all the co-sharers to sue jointly for the arrears of the whole rent. If they cannot agree amongst themselves to sue as co-plaintiffs, any one or more can sue for such arrears, making defendants the other co-sharers who would not join as plaintiffs.

[5] The words in brackets may be unnecessary, regard being had to Article 2.

[6] Receipts ought also to specify with sufficient detail for identification the tenure, under-tenure, holding, or land, for which the payment of rent has been made.

out the consent of his landlord erect a permanent[a] building, dig a tank,[b] or execute any other work, which materially alters the condition of the land held by him and renders it permanently unfit for agricultural or horticultural purposes.[7]

[a] 8 B. L. R. 242: N. W. P. H. C. Rep. F. B. 119, 125.

[b] 8 B. L. R. Appen. 70: 11 B. L. R. Appen. 41.

ARTICLE **63.**

Tenant may not deny title of person who let him into possession.

No tenant or person claiming through him shall be permitted to deny that the landlord, who let such tenant into possession of the land in respect of which the relation of landlord and tenant continues to exist between such landlord and such tenant or person aforesaid, had a valid title to such land at the time of such letting into possession.

Act I of 1872, s. 116. 3 R. J. & P. J. 14: 7 B. L. R. 723 *note*.

Tenant may not deny title of person to whom he has attorned, unless he can show deceit, mistake, &c.

When a person in possession of land as a tenant has, upon the death of his landlord or the expiry or legal defeasance of his landlord's title, acknowledged by payment of rent or otherwise the title of a person claiming to take the place of landlord, he shall not afterwards be permitted to deny such person's title, unless he can show that he was deceived or acted in ignorance or under a misapprehension of facts, and that some other person has a better title.[8]

9 W. R. 162: B. L. R. F. B. 588.

Tenant may show that landlord's title has expired or been defeated.

But such tenant or person claiming under him may show that such landlord's title has expired or been defeated or annulled since such letting into possession or such acknowledgment.

Mere non-payment of rent does not determine relation of landlord and tenant.

When the relation of landlord and tenant exists between two persons in respect of any property, the non-payment of rent for such property by such tenant to such landlord will not of itself determine such relation.[9]

I. L. R. 4 Calc. 314 3 C. L. R. 119 B. L. R. F. B. 321: W. R. Sp. No. F. B. 154, 157: 7 W. R. 400: 24 W. R. 386.

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[7] The sanction to this Article should be damages or an injunction to restore the land to its original condition. According to English law the mere relation of landlord and tenant creates an implied obligation on the part of the tenant to manage and use the land in a husbandlike manner, according to the custom of the country. The importance of good agriculture has not yet been sufficiently understood in India to have raised questions of this nature.

[8] See Woodfall, 244, 245: Fawcett, 129.

[9] There is no rule in these provinces as to the right of a tenant to the away-going crop when the tenancy is determined while the crop is on the land. A rule has been made for the North-Western Provinces (Act XVIII of 1873, s. 42) and for Oudh (Act XIX of 1868, s. 46): and similar provision is much required in the provinces included in the Bengal Lieutenant-Governorship.

CHAPTER IV.

Of Penalties and Damages.

ARTICLE 64.

Reg. VIII of 1793, s. 51, cl. 2.

Penalty on proprietor for exaction from talukdar.

Any proprietor who exacts from a talukdar more than he has a right to receive, shall be adjudged by the Court to pay a penalty of double the amount of such exaction with all costs of suit to the party injured.

Reg. VIII of 1793, s. 52.

Penalty for exaction of more than sum specified in tenant's engagement.

All sums received by any actual proprietor of land, or any farmer of land of whatever description, over and above what is specified in the engagement of the persons paying the same, shall be considered as exacted and be repaid with a penalty of double the amount.

Reg. VIII of 1793, s. 55.

Penalty for exaction of new *abwab*.

The exaction of any new *abwab* or *mathut* shall be punished by a penalty equal to three times the amount imposed; and if at any subsequent period it be discovered that new *abwab* or *mathut* have been imposed, the person imposing the same shall be liable to this penalty for the entire period of such impositions.[1]

Act VIII (B.C.) of 1869, s. 11; Act X of 1859, s. 10.

Under-tenant or ryot entitled to recover damages for exactions in excess of rent.

[a] 1 W. R. 290.

Every tenant from whom any sum is exacted in excess of the rent specified in his pottah, or payable under the provisions of this Digest, whether as *abwab* or under any other pretext, shall be entitled[a] to recover from the person receiving such rent damages not exceeding double the amount so exacted.

ARTICLE 65.

Act VIII (B.C.) of 1869, s. 11; Act X of 1859, s. 10

[b] 1 W. R. 290; 1 Board's Rep. 135.

Damages recoverable for withholding receipts for rent.

Every tenant, from whom a receipt is withheld for any sum of money[2] paid by him as rent, shall be entitled[b] to recover from the person receiving[3] such rent damages not exceeding double the amount so paid.

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[1] This must be taken to be governed by the following clause. Section 1 of Act X of 1859 enacted that such parts of Reg. VIII of 1793 as relate to the adjudication of penalties for the refusal of pottahs and receipts for rent, and for the exaction of any sums as *abwab* or in excess of the amount specified in any engagements for the payment of rent, are to be subject to the modifications contained in the Act. This section was repealed by section 1, Act XIV of 1870, subject to the provisoes therein contained, which consider. There is no similar express provision in Act VIII (B.C.) of 1869; but, as a matter of construction, the later enactment must modify the earlier one, where the provisions of both cannot stand together. The above fragments of the law have been reproduced almost *verbatim*. It is manifest that they really contain, and might be expressed as, a general rule for landlords and tenants.

[2] The law does not require receipts for rent paid in kind; this omission ought to be rectified.

[3] Where rent is paid to a zemindar's gomashta, is the zemindar or the gomashta "the person receiving?"

ARTICLE 66.

Damages for extorting payment of rent by duress.

If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, such tenant shall be entitled to recover such damages, not exceeding in any case the sum of two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this Article shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

Act VIII (B.C.) of 1865, s. 13: Act X of 1859, s. 12.

See Article 57.

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ARTICLE 67.

Damages for not adjusting instalments of rent according to harvest.

Proprietors, dependent talukdars, and farmers of every description are liable to be sued for damages for not adjusting the instalments of the rents receivable by them from their under-tenants and ryots according to the time of reaping and selling the produce, as required by Article 55.

Reg. VIII of 1793, s. 64.

ARTICLE 68.

The Court may award damages not exceeding 25 per cent. on rent not paid without reasonable or probable cause.

In any suit brought for rent, if it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount due by him, and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his duly authorized agent, or in case of the refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount in the Court before the institution of the suit in the manner hereinafter provided, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as the Court may think fit. These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of twelve per centum per annum from the date of decree until payment thereof.

Act VIII (B.C.) of 1869, s. 44: Act VI (B.C.) of 1862, s. 2.

Explanation.—The Court may not give, in addition to damages, interest before decree upon the rent decreed.

1 W. R. 100.

ARTICLE **69.**

Act VIII (B.C.) of 1869, s. 45 : Act VI (B.C.) of 1862, s. 3.

The Court may award compensation not exceeding 25 per cent. on amount claimed to defendant improperly sued for rent.

In any suit brought for rent, if it shall appear to the Court that the plaintiff has instituted the suit against the defendant without reasonable or probable cause, or that the defendant had, before the institution of the suit, duly deposited in the Court in the manner hereinafter provided, the full amount which the Court shall find to have been due to the plaintiff at the date of such deposit, it shall be lawful for the Court to award to the defendant, by way of compensation, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as the Court may think fit; and such sum, with interest at the rate of twelve per centum per annum until payment thereof, shall be recoverable from the plaintiff in like manner as sums ordered to be paid by decrees of such Court.

ARTICLE **70.**

Act VIII (B.C.) of 1869, s. 97 : Act X of 1859, s. 141.

Persons prevented from suing in time to save distrained property from sale, may sue for damages.

If any person, whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing a suit immediately after the distraint and before the issue of notice of sale to contest the demand or to try the right to the property, as the case may be, and his property is in consequence brought to sale, he may nevertheless institute a suit to recover damages for the illegal distress and sale of his property.

ARTICLE **71.**

Act VIII (B.C.) of 1869, s. 98 : Act X of 1859, s. 142.

Persons aggrieved by any illegal act of distrainer may sue for damages.

If any person empowered to distrain property, or employed for that purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due otherwise than according to the provisions of this Digest, or if any distrained property shall be lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Digest, the owner of the property may institute a suit to recover damages for any injury which he may have thereby sustained.

ARTICLE **72.**

Damages for distraint by person not having authority to distrain.

If any person not empowered to distrain property under the provisions hereafter contained in this Digest, nor employed for the purpose under a written authority by a person so empowered, shall under color of the law of distraint hereinafter contained distrain or sell or cause to be sold any property, the owner of the property may institute a suit to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said person shall, when the act complained of does not amount to criminal trespass, be liable to fine which may extend to three hundred rupees, or to imprisonment, simple or rigorous, which may extend to two months, or to both, in addition to any damages which may be awarded against him in such suit.

Act VIII (B.C.) of 1869, s 99 : Act X of 1859, s. 143.

ARTICLE **73.**

Penalty for resistance to distraint or removal of distrained property.

If any person shall resist a distraint of property duly made under this Digest, or shall forcibly or clandestinely remove any distrained property, the Court which would have jurisdiction in a suit for the rent for which such distraint was made, shall, upon complaint being made within fifteen days from the date of such resistance or removal, cause the person accused to be arrested; and if the offence be proved, and the offender be the owner of the property, shall order him to be imprisoned in the Civil Jail for six months, or until the whole arrear due to the distrainer, with all expenses and costs, shall be paid or levied by attachment and sale of the property of the offender under warrant of the Court. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment for a period not exceeding two months.

Act VIII (B.C.) of 1869, s. 101 : Act X of 1859, s. 145.

ARTICLE **74.**

Resistance of Collector's process punishable by Collector as resistance of process of Civil Court.

Any resistance or opposition to the lawful process of a Collector or Deputy Collector in any case triable by any such Officer under the provisions of this Digest may be punished by such Officer according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice. When in any such case the offender is not present in Court, such Officer may summon him to answer to the charge, and if after due service of the summons he

Act X of 1859, s. 147.

fail to attend, may issue a warrant for his apprehension. Orders passed by Collectors under this Article shall be appealable to the Commissioner: and all such orders passed by a Deputy Collector shall be appealable to the Collector.

CHAPTER V.

Of the Limitation of Suits.

ARTICLE 75.

Act VIII (B.C.) of 1869, s 28 : Act X of 1859, s. 31.

Suits for pottahs and kabuliyats may be brought at any time during tenancy.

Suits for the delivery of pottahs or kabuliyats and for the determination of the rates of rent at which such pottahs or kabuliyats are to be delivered, may be instituted at any time during the tenancy.

Act X of 1859, s. 28.

Suits for assessment of lakheraj land.

Suits for assessment of land under Article 83 shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee or of some person claiming under him first accrued.

ARTICLE 76.

Act VIII (B.C.) of 1869, s. 30 : Act X of 1859, s. 33.

Suits against agents for money, papers, or accounts may be brought during agency, or one year after its determination.

Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by an agent, may be brought at any time during the agency or within one year after the determination of the agency of such agent: provided that, if the person having the right to sue shall by means of fraud have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person ; but no such suit shall in any case be brought at any time exceeding three years from the termination of the agency.

Act X of 1859, s. 24.

Explanation.—"Agent" in this Article means an agent employed by a landlord in the management of land or collection of rents : and the money, accounts, or papers sued for must have come into or have been in his hands in the course of such employment.[4]

[4] Section 24 of Act X was not reproduced in Act VIII (B.C.) of 1869. There can, however, be little doubt that there was no intention to extend the provisions of the law to agents other than those defined in this section. The section is not happily worded. What is meant by the "delivery of accounts?" Judicial officers in the Mofussil seem to think it sufficient to give a decree for the manual delivery of certain accounts, *e.g. Jama-wasil-baki, Baki jai*, &c., and to consider this decree satisfied if these accounts be

ARTICLE **77.**

One year's limitation for suits for damages, abatement, ejectment, recovery of possession, &c.

All suits instituted for the recovery of damages on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress, or on account of the excessive demand of rent, and all suits for abatement[5] of rent, and suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or of the breach of the conditions of any contract by which a ryot may be liable to be ejected, or a lease may be liable to be cancelled, and all suits to recover [without adjudication of any question of title[a]] the occupancy of any land, farm or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, and all suits arising out of the exercise of the power of distraint for arrears of rent conferred on zemindars and others by this Digest or any other provision of law, or out of any acts done under color of the exercise of the said power, shall be commenced within the period of one year from the date of the accruing of the cause of action, and not afterwards : provided that any suit which may be instituted under Article 70, or 71, or 72 shall be commenced within three months from the date of the occurrence of the cause of action.

Act VIII (B C.) of 1869, s. 27 : Act X of 1859, s. 30, which, however, contains no specification of suits.

[a] 21 W. R. 53 : 2 C. L. R. 4.

Proviso as to certain suits for damages for distraint.

Act VIII (B.C.) of 1869, s. 100 : Act X of 1859, s. 144.

ARTICLE **78.**

Three years' limitation for suits for arrears of rent.

Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeyt of the Fuslee or Willayuttee year in which the arrear claimed shall have

Act VIII (B.C.) of 1869, s. 29 : Act X of 1859, s. 32; 15 B. L. R 56.

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handed into court. The plaintiff has then to find out as best he may, how far they are correct or otherwise ; and, if he find them incorrect, bring a second suit for the recovery of any money that ought to have reached his hands. In other cases the suit is valued at some imaginary sum, say Rs. 500 ; and the decree is for the delivery of the accounts or the payment of this sum, no attempt being made to ascertain if, on taking a proper account, this sum would be really owing from the agent. It might well be made clear that the suit should be brought simply for an account; that it is an agent's business to render proper accounts supported by vouchers; that when plaintiff is entitled to succeed, there should first be an interlocutory decree directing the account to be taken; that the account should then be taken under the direction of the court, the defendant producing his accounts and vouchers ; and that the final decree should be for the amount found to be due to the plaintiff on the account so taken. It may be observed that this section has been held not to apply to a suit for the recovery of the balance due upon an account stated by an agent after the determination of the agency (20 W. R. 309).

[5] There is no provision for suits for *enhancement* in the above Article, which is taken *verbatim* from Act VIII (B.C.) of 1869. Consider whether the general words "all suits" in section 30 of Act X of 1859 would include such suits; and whether it is desirable that there should be any limitation in this class of cases.

become due: provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice of enhancement, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year, or of the month of Jeyt of the Fuslee or Willayuttee year, on account of which such enhanced rent is claimed.

Proviso as to enhanced rent.

Act VIII (B.C.) of 1869, s. 31: Act VI (B.C.) of 1862, s. 6.

Provided also that when rent has been deposited under the provisions hereafter contained in this Digest, no suit shall be brought against the person making the deposit, or his representatives, on account of any rent which accrued due prior to the date of such deposit, unless such suit be instituted within six months from the date of the service upon the landlord of the notice of deposit in the manner hereinafter provided.

Proviso when rent deposited.

12 Moo. In. Ap. 244; S. C. 2 B. L. R. P. C. 11; S. C. 11 W. R. P. C. 5: 8 B. L. R. 536. Distinguish I. L. R. 3 Calc. 6, 791, 817: 23 W. R. 281: 19 W. R. 18.

Explanation.—In any case in which a landlord is unable to sue for arrears of rent in consequence of the relation of landlord and tenant between him and the person holding his land having been determined by such landlord in the exercise of a legal right, if such relation be renewed between the parties, so that such person have had the beneficial enjoyment of such land, or have received mesne profits for the period between such determination and such renewal, such landlord shall upon such renewal be entitled to sue for arrears of rent for such period, and such arrears shall be deemed to have become due upon such renewal. A legal right may be exercised within the meaning of this rule, although it be exercised irregularly as regards a matter of form.[6]

12 Moo. In. Ap. 244.

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[6] This explanation is an attempt to formulate a rule based upon the cases at 12 Moo. In Ap. 244 and 8 B. L. R. 836, as explained by the other cases quoted above. Consider, however, whether any such general rule can be safely laid down, and whether these cases would not be better presented as an *Illustration*. As to the right of a tenant to recover enhanced rent levied from him under an enhancement decree subsequently reversed on appeal, see I. L. R. 3 Calc. 30.

In connexion with the subject of limitation as applicable to cases falling under the rent-law, consider the following points:—

(1) Contrary to the provisions of the Indian Limitation Act (see s. 5 of Act XV of 1877), when the period of limitation expires upon a day upon which the court is closed, no deduction of time is allowed and the suit may not be instituted on the day that the court re-opens (I. L. R. 4 Calc. 50; S. C. 2 C. L. R. 543; 2 W. R. Act X 21—Full Bench: 19 W. R. 5—Privy Council).

(2) Contrary to the provisions of the Indian Limitation Act (see s. 14 of Act XV of 1877) the time may not be deducted, during which a plaintiff was prosecuting with due diligence another civil proceeding founded on the same cause of action, and prosecuted in good faith in a court which from defect of jurisdiction or other cause of a like nature was unable to entertain it (2 W. R. Act X, 21: 19 W. R. 5).

(3) Contrary to the provisions of the Indian Limitation Act (see section 7 of Act XV of 1877) no deduction of time is allowed for legal disability, *e.g.* minority, lunacy, idiotcy (5 W. R. Act X, 41).

ARTICLE **79.**

Rule of limitation applicable to execution of decrees in Rent Cases.

No process of execution of any description whatsoever shall be issued on a judgment in any suit for any of the causes of action mentioned in Article 75, 76, 77, or 78 of this Digest, unless application for execution be made[a] within three years from the date of such judgment: provided that if the judgment be for a sum exceeding Rs. 500, the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts.

Act VIII (B.C.) of 1869, s. 58: Act X of 1859, s. 92.

[a] 6 W. R. Act X, 84: 4 B. L. R. F. B. 82: I. L. R. 3 Calc. 548.

Explanation.—In calculating whether the judgment be for a sum exceeding Rs. 500, the cost of taking out execution shall,[b] but interest which accrued after decree upon the sum decreed shall not,[c] be taken into account.[7]

[b] 6 W. R. Act X, 8.

[c] 24 W. R. 442.

PART II.

OF THE JURISDICTION OF THE COURTS, AND THE PROCEDURE FOR ENFORCING THE RIGHTS AND DUTIES OF LANDLORDS AND TENANTS.

CHAPTER VI.

OF THE JURISDICTION OF THE COURTS.

ARTICLE **80.**

Civil Courts have jurisdiction in cases between landlords and tenants in what districts.

In the following districts in the provinces subject to the Lieutenant-Governor of Bengal, that is say—

in the districts of Bhagulpore, Monghyr, Purneah,

Act VIII (B.C) of 1869, ss. 33 and 106: Notification dated 24th February 1870, published at page 361 of the *Calcutta Gazette* of the 2nd March 1870. Sylhet, since transferred to Assam, was included in this Notification.

(4) Contrary to the provisions of the Indian Limitation Act (see section 25, Act XV of 1877) time is to be computed according to the English calendar (9 B. L. R. Appendix 41: 23 W. R. 275).

(5) By a parity of reasoning to that upon which the above-quoted decisions are based, the provision of the Limitation Act, which in the computation of the time allowed for appealing permits a deduction of the time necessary for procuring a copy of the decree and judgment of the Lower Court, has no application to Rent Cases, although this time is at present deducted upon the authority of a circular order of the late Sudder Court.

Whatever difference of opinion there may be about (2), (3), and (4), it will probably be admitted that (1) and (5) should be made applicable to Rent Cases. They have been made applicable in the North-Western Provinces—see sections 202 and 203 of Act XVIII of 1873.

[7] I have placed the Substantive Law in Part I, *i.e.* so far as I could do so consistently with altering the matter of the statute law as little as possible. There are many points upon which there is no authority in the statute-law or in the case-law; or, if there is authority, it is so small or so partial that no enunciation of a principle can be based thereupon. For example it has not been authoritatively settled whether the doctrine of *merger* does or does not apply to tenures—see however 13 B. L. R. 198. Then what becomes of a tenure on failure of heirs of the grantee—does it escheat to the grantor or to Government? See 15 W. R 549.

Patna, Gya, Chumparun, Sarun, Shahabad, Tirhoot, Rajshahye, Bogra, Dinagepore, Maldah, Moorshedabad, Pubna, Rungpore, Burdwan, Bankoora, Beerbhoom, Hooghly, Howrah, Midnapore, Nuddea, Jessore, 24-Pergunnahs, Dacca, Backergunge, Furreedpore, Mymensing, Chittagong, Noakholly, and Tipperah—

the Civil Courts have jurisdiction, subject to the provisions of the Bengal Civil Courts' Act, 1871, over all causes of action arising under the provisions of this Digest, save where it is otherwise specially provided.

9 B. L. R. 123.

ARTICLE **81.**

Act VIII (B.C.) of 1869, ss. 106, 107.

Lieutenant-Governor of Bengal may by notification published in *Calcutta Gazette* transfer jurisdiction from Revenue Courts to Civil Courts in any other district.

The Lieutenant-Governor of Bengal may from time to time,[1] by an order published in the *Calcutta Gazette*, direct that in any district in the provinces subject to such Lieutenant-Governor, other than the districts specified in Article 80, the Civil Courts shall exercise jurisdiction over all causes of action arising under the provisions of this Digest, save as provided aforesaid, and upon such publication of such order the Civil Courts shall exercise such jurisdiction, and all the provisions of this Digest applicable to the exercise of jurisdiction by the Civil Courts in all matters between landlords and tenants shall have full force and effect, and all the provisions of this Digest applicable to the exercise of jurisdictions in such matters by the Revenue Courts shall cease to have force and effect in such district from such day and time as may be in such order appointed:

Act VIII (B.C) of 1869, s 108.

provided that all suits and proceedings instituted before such day and time in the Revenue Courts and all appeals therein shall be heard and determined, and execution of decrees and orders therein shall be had, and the practice and procedure therein shall be such and the same, as if no such order had been made or published.

ARTICLE **82.**

Revenue Courts have jurisdiction in what cases between landlords and tenants in what districts.

In the districts subject to the Lieutenant-Governor of Bengal, other than the districts mentioned in Articles 80 and 81, the following suits and matters are cognizable by the Collectors of land revenue and must be instituted and tried and dealt with under the provisions hereinafter contained and called *The Revenue Courts' Procedure*,

[1] I take this to be the meaning of the section, although it is so worded as to support the contention that it became spent after the publication of a single order.

and except in the way of appeal, as hereinafter provided they are not cognizable by any Civil Court, that is to say—

1—all suits for the delivery of pottahs or kabuliyats, or for the determination of the rates of rent at which such pottahs or kabuliyats are to be delivered ; Act X of 1859, s. 23.

2—all suits for damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress ;

3—all complaints of excessive demand of rent, and all claims to abatement of rent ;

4—all suits for arrears of rent due on account of land either kherajee or lakheraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like ;

5—all suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment or a lease may be liable to be cancelled ;

6—all suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same ;

7—all suits arising out of the exercise of the power of distraint by proprietors and others, or out of any acts done under color of the exercise of the said power as in this Digest particularly provided ;

8—all suits by proprietors and others in receipt of the rent of land against agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession ; Act X of 1859, s. 24.

9—applications by proprietors or other persons in receipt of the rent of land for assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act ; Act X of 1859, s. 25.

Act VI (B.C.) of 1862, ss. 9 and 10: Act VIII (B.C.) of 1869, ss. 37 and 38

10—applications by proprietors and other persons in receipt of the rent of land for orders allowing the measurement of such land and directing the attendance of the tenants, or for a measurement and ascertainment and record of the names of the tenants and of the tenures, under-tenures, holdings, rates of rent, and the persons by whom the rents are payable;

Act X of 1859, s. 28.

11—applications under Article 83 by proprietors and other persons in receipt of the rent of land to dispossess persons holding land exempt from the payment of revenue.

Act X of 1859, s 25.

When an application of the nature of that above specified under No. 9 is made to a Collector, such Collector shall enquire into the case and pass orders in the manner hereinafter provided for suits: provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated *thika zaripeshgi*, or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In such cases the parties must proceed by suit in the Civil Court.

ARTICLE 83.

Act X of 1859, s. 28.

Proprietors and others how to proceed to assess lakheraj land held under grants posterior to the 1st December 1790.

In the case of grants made since the first day of December in the year of our Lord one thousand seven hundred and ninety for holding exempt from the payment of revenue land exceeding or under one hundred beegahs,[2] in respect of which grants it has been declared by law[a] that they are null and void, and that no length of possession shall give validity thereto either with regard to the property in the soil or the rents of it, proprietors or other persons in receipt of the rent of lands shall not of their own authority collect the rents of such land so granted exempt from the payment of revenue, or dispossess the grantees of the proprietary right therein, or re-annex it to the estate or taluk in which it may be situate, but any proprietor or other person, who may desire to assess any such land or to dispossess any such grantee, shall make application to the Collector, and such application

Reg. XIX of 1793, s. 10; Reg. XII of 1805, s. 24.

[2] Reproduced *verbatim*. But suppose the grant were of one hundred beegahs exactly?

shall be dealt with as a suit under the provisions hereinafter contained.[3]

ARTICLE **84.**

Jurisdiction of Deputy Collectors and Assistant Collectors.

All the powers of a Collector in respect of suits and proceedings instituted in the Revenue Courts may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference by any Deputy Collector placed in charge of any sub-division of a district, or who is specially authorized by Government to receive such cases; and all applications and reports, allowed or required by the provisions of this Digest to be made to the Collector, may be made to any Deputy Collector having such local jurisdiction or such special authority as aforesaid; provided that no Deputy Collector appointed under Regulation IX, 1833, of the Bengal Code, shall exercise any judicial powers or other jurisdiction under this Digest, if entrusted with police functions. Act VI (B C) of 1862, s 19 Act X of 1859, s 164

Assistants to Collectors shall not exercise any powers under this Digest, unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors. Act X of 1859, 165

CHAPTER VII.

SPECIAL PROVISIONS AS TO SUITS FOR POTTAHS AND KABULIYATS, ENHANCEMENT, AND EJECTMENT.

SECTION I.—*Suits for Pottahs and Kabuliyats.*

ARTICLE **85.**

Suits for pottah or kabuliyat not maintainable unless relation of landlord and tenant subsist, and tenant be in possession.

A suit for a pottah[a] or kabuliyat[b] may not be maintained unless the relation of landlord and tenant be proved or admitted to subsist between the plaintiff and defendant in respect of the land for which such pottah or kabuliyat is claimed, and the tenant be in possession of such land.

[a] Marsh 67 6 W. R Act X, 56

[b] 2 B. L. R. A. C. 252: 3 W. R. Act X, 3 7 W. R 2: 8 W R. 188, 329: 9 W. R. 521: 10 W R. 407, 438 16 W. R. 296.

[3] There is no similar provision in Act VIII (B.C) of 1869. Apparently, therefore, the Collectors still retain their jurisdiction in these cases Consider the effect of Act VII (B C) of 1862, section 1 of which repeals section 30 of Regulation II of 1819, and section 2 of which enacts that *all suits* preferred by proprietors, farmers, or talukdars to resume the revenue of any land held free of assessment shall be instituted, heard and determined in and by the Civil Courts. Do "all suits" include those under section 28 of Act X of 1859? Probably not, as section 28 has not been expressly repealed. Reading the whole Act (VII) together, and in connection with the case of *Sonaton Ghose* (B. L. R. F. B 109), it may seem that "all suits" mean all suits cognizable under section 30 of Regulation II of 1819, *i e* suits for the resumption of grants of date prior to 1790. See pages 248 *et seq.* of my edition of the Bengal Regulations, where the law and the cases will be found at length.

4 B. L. R. Appen. 89 8 W. R. 329.

Suit for kabuliyat to be dismissed, if rate of rent and quantity of land be not proved.

A suit brought to obtain a kabuliyat shall be dismissed if the plaintiff fail to prove that he is entitled to the rate of rent claimed, or that the tenant, defendant, holds the quantity of land for which such kabuliyat is claimed.

ARTICLE **86.**

Act VIII (B.C.) of 1869, s. 55: Act X of 1859, s 80.

If person required by the decree refuse to grant pottah, Court may do so.

When a decree is given for the delivery of a pottah, if the person required by the decree to grant such pottah refuse or delay to grant the same, the Court or Collector may grant a pottah in conformity with the terms of the decree under the signature and seal of such Court or Collector, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

ARTICLE **87.**

Act VIII (B.C) of 1869, s. 56: Act X of 1859, s. 81.

If person required by the decree refuse to execute kabuliyat, copy of the decree to have effect of kabuliyat.

[a] 20 W. R. 273: 21 W. R. 33.

When a decree is given for the delivery of a kabuliyat, if the person required by the decree to execute such kabuliyat shall, upon being requested[a] to execute the same, refuse to do so, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the signature and seal of the Court or Collector shall be of the same force and effect as a kabuliyat executed by the said person.

SECTION II.—*Enhancement.*

ARTICLE **88.**

Act VIII (B.C.) of 1869, s. 15 · Act X of 1859, s. 14.

Mode of contesting claim to enhance rent.

Any tenure-holder, undertenure-holder, or ryot, on whom a notice of enhancement has been served, may contest his liability to pay the enhanced rent demanded of him either by complaint of excessive demand of rent, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent: provided that a ryot not having a right of occupancy may not proceed by complaint of excessive demand of rent.

Marsh. 341.

ARTICLE **89.**

3 W R. Act X, 139, 140: 5 W. R. 14: 6 W. R. 25: 3 B L. R. Appen. 31. Note that the cases at B. L. R. F. B. 15 (S. C. Marsh. 523) and

Enhancement suit to be dismissed, if service of notice be not proved.

If the plaintiff in a suit brought for the recovery of enhanced rent fail to prove that a notice of enhancement was served upon the defendant, his suit shall be dismissed, and the Court may not make a decree declaring

the rent liable to enhancement or otherwise: provided that, if the defendant admit an arrear of rent at the former rate to be due, a decree may be made for such arrear so admitted to be due.

Decree for admitted arrears of rent.

No such suit shall be dismissed merely because the plaintiff fails to prove that he is entitled to the exact rate of rent claimed in the notice of enhancement.

Not necessary to prove exact rate claimed in enhancement notice.

12 B. L. R. 53 were decided upon the law before Act X.
22 W. R. 13, 256, 351 · 24 W. R. 35, 82. Distinguish cases at 19 W. R. 141 : I. R. 2 I. A. 200 : 20 W. R. 186. 24 W. R. 13.

ARTICLE **90.**

The purchaser of an entire estate in the permanently-settled districts of Bengal, Behar, and Orissa sold for the recovery of arrears of Government revenue due thereupon is entitled to proceed under the provisions of this Digest to enhance the rent of:—

Act XI of 1859, s. 37.

Purchaser of permanently-settled estate sold for arrears of its own revenue may proceed how to enhance rents of what lands.

1—tenures existing at the time of settlement, which have not been held at a fixed rent;

2—lands let on lease, whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or whereon mines have been sunk, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent equal to the rent of good arable land for a term exceeding twelve years, but not otherwise.

ARTICLE **91.**

The purchaser of a transferable tenure, as defined in Article 12, paragraph 11, sold for arrears of Government revenue due thereupon, may proceed under the provisions of this Digest to enhance the rent of land whereon dwelling-houses, manufactories, or other permanent buildings have been erected or whereon permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made, if he can prove the same to have been held at what was originally an unfair rent, unless the same shall have been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.[4]

Act VII (B.C.) of 1868, s. 13.

How purchaser of transferable tenure may proceed to enhance rent of what lands.

[4] This and the preceding Article have been taken *verbatim* from the Acts quoted on the margin. The points of difference might well be got rid of, and the two sets of provisions amalgamated.

ARTICLE **92.**

Reg. XXIX of 1814, s. 2.

Beerbhoom ghatwals not liable to enhancement.

The ghatwals in the district of Beerbhoom are not subject to enhancement of rent, so long as they punctually discharge the revenue assessed upon them and fulfil the other obligations of their tenure.

SECTION III.—*Ejectment.*

ARTICLE **93.**

Act VIII (B.C.) of 1869, s. 52: Act X of 1859, s. 78.

Claim for ejectment or cancelment of lease how to be put forward.

Stay of ejectment on satisfaction of decree within 15 days.

Any person desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent may sue for such ejectment or cancelment, and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of such suits for the ejectment of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

12 B. L. R. 439 (Privy Council)[5]: B. L. R. F. B. 972.

Explanation I.—The judgment-debtor is entitled to the benefit of the fifteen days' rule, even though the lease contain a stipulation that it shall be void upon one or more instalments of rent falling into arrear, or upon the breach of any other condition as to payment of rent therein contained.

Marsh. 471.

23 W. R. 50.

Explanation II.—If the original decree is altered or amended on appeal or review, the fifteen days shall be computed from the date of the judgment on appeal or review. If on appeal or review the original decree be not altered or amended, the fifteen days shall be computed from the date of such original decree.

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[5] This was a case of a *mokurrari* lease (whether of a ryot or not, is not apparent from the report). Consider the cases at 19 W. R. 349 and 22 W. R 376, in which it was held that the liability to ejectment of (1) a *mokurrari istemrari ijaradar*, and (2) of a *talukdar* is to be determined by the provisions of his lease, and not by this section.

CHAPTER VIII.

Survey and Measurement of Land.

ARTICLE **94.**

Procedure if opposition made to the measurement of land, or if tenants refuse to attend and point out land.

If any person intending to measure any land which he has a right to measure, is opposed in making such measurement by the occupant of the land; or if any tenant having received notice of the intended measurement of land held or cultivated by him, which is liable to such measurement, refuses (or neglects?) to attend and point out such land, the person claiming the right to measure such land may apply to establish such right, in the districts mentioned in Article 80 or 81, to the Civil Court which would have jurisdiction in case such suit had been brought for the recovery of such land, and in the districts specified in Article 82, to the Collector; and such Court or Collector shall hear and determine the right to make such measurement, and, if the case shall so require, shall make an order enjoining or excusing the attendance of any such tenant. If any tenant after the issue of an order enjoining his attendance neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made, or any of the proceedings held, in his absence.

Act VIII (B.C.) of 1869, s. 37: Act VI (B.C.) of 1862, s. 9.

ARTICLE **95.**

Procedure to effect measurement of land, when it cannot be ascertained who are the persons liable to pay rent, in districts mentioned in Articles 80, 81.

In any case in which the proprietor of an estate, tenure, or under-tenure, or other person entitled to receive the rents of an estate, tenure, or under-tenure, is unable to measure the lands comprised in such estate, tenure, or under-tenure, or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent to him[a] in respect of the lands or any part of the lands comprised therein, such proprietor or other person may, in any of the districts mentioned in Article 80 or 81, apply to the Civil Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands, and such Court upon proof of such proprietor's inability as aforesaid,[b] and on the necessary costs being deposited therein by the applicant, shall order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector in whose jurisdiction

Act VIII (B.C.) of 1869, s. 38.

[a] 8 W. R. 11.

[b] 10 B. L. R. 401 *note*.

the lands are situate, together with the sum so deposited for costs, and the Collector shall thereupon proceed to measure such lands, and shall ascertain and record the names of the persons in occupation of the same, or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the subsisting tenures, under-tenures and holdings, the existing[c] rates of rent payable in respect of such lands, and the persons by whom respectively such rents are payable.

[c] 22 W. R. 476: 15 W. R. 243: 14 W. R 269: 12 W. R. 371.

If after due enquiry the Collector shall be unable to cause such lands to be measured, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures, under-tenures, or holdings in such lands, or any part thereof, then and in any such case such Collector may declare the same to have lapsed to the party on whose application such enquiry may have been made. If any person, within fifteen days after such Collector shall have recorded the name of such person as being in occupation of such land or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and satisfy such Collector that there has been a failure of justice, such Collector may, upon such terms or conditions as may seem fit, alter or rescind such order according to the justice of the case.

ARTICLE 96.

Act VIII (B.C.) of 1869, s. 39.

Collector how to act on completing measurement in case referred by Civil Court.

The Collector, to whom a Civil Court shall have transmitted a copy of its order under Article 95, shall, as soon as conveniently may be after he shall have finally completed any such measurement and record, return a copy thereof to the Court by which such measurement had been ordered, and such Court shall receive and record the same; and every decision of the Collector made in pursuance of the provisions of Article 95 shall be appealable as if the same had been an order of the Court into which such copy had been returned, made upon the day on which such copy was so returned; but, save as aforesaid, every decision of such Collector made in pursuance of the provisions of the said Article shall be final.

21 W. R. 171.

Act VIII (B C.) of 1869, s. 40.

Procedure and powers of Collector.

The provisions of the Code of Civil Procedure or of any Act for the time being in force in the Civil Courts in Bengal, relating to the evidence of witnesses, to procuring the attendance of

witnesses and the production of documents, and to the examination, remuneration, and punishment of witnesses, shall apply to all proceedings before any Collector under Article 95, and for the purposes aforesaid the Collector shall have all the powers and authorities in and by such Acts or any of them conferred upon such Civil Courts.

ARTICLE **97.**

In districts specified in Article 82, application to be made to Collector, who has jurisdiction to proceed thereon.

In any such case as that mentioned in Article 95, such proprietor or other person may in any of the districts specified in Article 82 apply to the Collector, who upon such application shall proceed as he is by Article 95 empowered and directed to proceed upon the transmission to him of a copy of an order for measurement by a Civil Court. Act VI (B.C.) of 1862, s. 10.

Procedure and powers of Collector.

The provisions of Article 96, paragraph 2, are applicable to a Collector proceeding under this Article, save in so far as they are inconsistent with *The Revenue Courts' Procedure* hereinafter contained. Act X of 1859, s. 67, as extended by the above section.

Explanation.—It is not competent to one or more only of two or more sharers in a joint undivided estate, tenure, or under-tenure to make an application to a Civil Court under Article 95, or to the Collector under this Article. 10 B. L. R. 398 *note*, 403 *note*: 18 W. R. 332: 16 W. R. 126.

ARTICLE **98.**

Measurements to be made by the pergunnah pole.

All measurements made under Article 94, 95, 96, or 97, shall be made according to the standard pole of measurement of the pergunnah in which the land is situated. Act VIII (B.C.) of 1869, s. 41: Act VI (B.C.) of 1862, s. 11.

Determination of the length of the standard pole.

If there is a dispute as to the length of such standard pole, the Collector shall determine the proper length thereof, and an appeal shall lie from the Collector's decision to the District Judge. If no such appeal be preferred, the decision of the Collector shall be final and conclusive. 6 B. L. R. 1 (Full Bench): 24 W. R. 424.

CHAPTER IX.

OF THE RECOVERY OF RENT.

SECTION I.—*Deposit of Rent by Tenants after Tender.*

ARTICLE **99.**

Act VIII (B.C.) of 1869, s. 46: Act VI (B. C.) of 1862, s. 4.

Tenant may, after tender, &c., pay into Court, without any action being brought against him, what he admits to be due to his landlord.

If any tenant[6] shall at the Mâl Kachahri for the receipt of rents or other place where the rents of the land or other immoveable property held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the proprietor or other person in receipt of the rent of such land; and if the amount so tendered shall not be accepted, and a receipt in full shall not be forthwith granted, it shall be lawful for such tenant, without any suit having been instituted against him, to deposit such amount in the Civil Court or with the Collector having jurisdiction to entertain a suit for such rent, to the credit of such proprietor or other person aforesaid: and such deposit shall, so far as such tenant and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of, a payment then made by such tenant of the amount deposited to such proprietor or other person.

Such deposit to have effect of payment to person entitled to the rent.

ARTICLE **100.**

Act VIII (B.C.) of 1869, s. 47: Act VI (B.C.) of 1862, s. 5.

Procedure upon depositing rent in Court and paying it out to the landlord.

Such deposit shall be received in such Court or by such Collector on the application of the tenant or his agent, made in writing, and on the tenant or his agent making a declaration in the form, or as nearly as circumstances will admit in the form, shown in Schedule A annexed to this Digest, and the Court or Collector shall give a receipt for the same under its seal. If the declaration shall contain any averment which the person making the declaration shall

[6] The wording of the existing sections is "under-tenant or ryot." In the case at 22 W. R. 431, "under-tenant" was held to include a *patnidar*, and observation was made as to the difficulty of fixing the exact meaning of the term. We find it used in the old Regulations, in which it always appears to mean any *tenant under* the person who pays revenue to Government, *e.g.* the Preamble of Regulation VII of 1799 commences:—"The powers which the landholders and farmers of land paying revenue to Government are at present allowed to exercise for enforcing payment of the rents due to them from their under-tenants, &c." Later, it would seem to have been applied to all such persons other than ryots: and "under-tenant or ryot" would seem to have comprised all persons holding or paying rent immediately to those directly responsible for the Government revenue.

know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. Upon receiving the money so deposited, the Court or Collector shall issue a notice to the person to whose credit it has been deposited in the form shown in Schedule B annexed to this Digest; and such notice shall be served, without the payment of any fee, either upon the person to whom it is addressed, or upon his naib, gomashtah, or other agent; and in the absence of any such agent, it shall be served by sticking up a copy of the same in the said Court or Collector's office, and another copy upon the Mâl Kachahri for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued, or his duly authorized agent, shall appear, and apply that the money in deposit be paid to him, it shall be immediately made over to him.[7]

SECTION II.—*Arrears of Rent, and Claims recoverable as Rent.*

ARTICLE **101.**

What to be deemed an arrear of rent under this Digest. Interest on arrears.

Any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Digest, and, unless otherwise provided by written agreement, shall be liable to interest at twelve per centum per annum.

Act VIII (B.C.) of 1869, s. 21 : Act X of 1859, s. 20.

ARTICLE **102.**

Arrears of rent may be recovered—

Arrears of rent how recoverable—(1) by distraint.

1—by distraint as in this Digest hereafter provided—in the case of arrears due from ryots:

Act VIII (B.C.) of 1869, s. 68 : Act X of 1859, s. 112.

(2) by summary sale.

2—by a summary sale without a decree of Court as in this Digest hereafter provided—in the case of tenures upon which the right of selling or bringing to

Reg. VIII of 1819, s. 8, cl. 1.

[7] It has been suggested that these provisions as to the deposit of rent should be made applicable to cases in which tenants are unable to pay their rents, either because their landlords, being sharers in a joint undivided estate, are at feud amongst themselves and will not appoint a common agent or manager, or because the landlord's title upon a succession is in dispute.

sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure.

(3) by suit, decree, and execution.

3—by suit and decree and execution in the Civil Court, or the Court of the Collector according to the procedure in this Digest hereafter provided—in the case of all arrears of rent:

Act VIII (B.C.) of 1869, s. 33: Act X of 1859, s. 23, cl. 4.

By summary sale or by certificate under "*The Revenue Authorities' Summary Procedure.*"

4—by summary sale or by certificate under the provisions hereafter contained and called "The Revenue Authorities' Summary Procedure"—in the case of rent payable to the Collector for land, pasturage, forest-rights, fisheries and the like being the property of Government, or in the case of rent payable to a Collector in charge of an estate or tenure on behalf of a private person from any ryot, or from any person holding any interest in land, pasturage, forest-rights, fisheries and the like, created by a Collector while so in charge of any such estate or tenure, and held direct[a] from him or his successor in office.

Act VIII (B.C.) of 1868, s. 1; definitions of "revenue" and "tenure." Act I (B.C.) of 1875.

[a] 15 B L. R. 343.

ARTICLE **103.**

Claims recoverable as arrears of rent.

The following claims are recoverable as arrears of rent:—

(*a*) sums recoverable under section 33 of "The Hooghly and Burdwan Drainage Act" by "proprietors of lands" as in that Act defined, from subordinate tenants benefited by the works carried out under the said Act.

Act V (B.C.) of 1871, s 33.

(*b*) sums recoverable on account of road cess under sections 24 and 25 of "The District Road Cess Act, 1871."

Act X (B.C.) of 1871, ss. 24, 25.

(*c*) sums recoverable on account of the public works cess under "The Provincial Public Works Act, 1877,"

Act II (B. C) of 1877, s. 5.

Sums or instalments payable under sections 49 and 51 of "The Bengal Embankment Act, 1873," to a "zemindar" or "proprietor," as these terms are defined in the said Act, may be recovered by summary sale without a decree in the manner hereinafter provided for the summary sale of tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of

Act VI (B C.) of 1873, ss. 49, 51.

the tenure: provided that the right or interest of any person holding from the proprietor of a tenure sold for such sums or instalments shall not be affected by any such sale.

Sums payable under section 38 of "The Bengal Survey Act, 1875," to a "zemindar" or "tenure-holder," as these terms are defined in the said Act, may be recovered in any manner provided in this Digest for the recovery of arrears of rent in respect of the "tenure," as defined in the said Act, for which such sums are due.

Act V (B.C.) of 1875, s. 38.

SECTION III.—*Distraint.*

ARTICLE **104.**

The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent, as defined in Article 101, is due from any cultivator of land, the person entitled to receive the rent of such land immediately from the actual cultivator thereof, instead of bringing a suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due, under the rules contained in this Article and in Articles 105 to 134 inclusive:

Act VIII (B.C.) of 1869, s. 68: Act X of 1859, s. 112.

Produce of land to be held hypothecated for rent.

Arrears of rent recoverable by distraint under the following rules.

provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to distraint:

Cultivators who have given security to be exempt from distraint.

provided also that no sharer in a joint estate, tenure, or under-tenure in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate, tenure, or under-tenure on behalf of all the sharers in the same.

Proviso.

ARTICLE **105.**

Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator: nor for arrears of rent which fell due before the latest day

Act VIII (B.C.) of 1869, s. 69: Act X of 1859, s. 113.

No distraint for rent in certain cases.

Act XI of 1859, s. 55.

of payment of the Government Revenue and are payable to the defaulting proprietor of an estate sold for arrears of Government Revenue[7].

ARTICLE **106.**

Act VIII (B.C.) of 1869, s. 70: Act X of 1859, s 114.

Power of distraint may be exercised by managers under Court of Wards, &c.

The power of distraint vested by Article 104 in persons entitled to receive rent from cultivators of land may be exercised by managers under the Court of Wards, Surburakara and Tehsildars of estates held under khas management, and other persons lawfully entrusted with the charge of landed property, and also by Naibs, Gomashtahs, and other agents employed by any such persons as aforesaid in the collection of rent, if expressly authorized by power-of-attorney in that behalf: provided that, if any illegal act is committed by any such Naib, Gomastah, or other agent under color of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Proviso.

ARTICLE **107.**

Act VIII (B.C.) of 1869, s. 76: Act X of 1859, s. 120.

Persons empowered to distrain and employing their servants to do so, to give them a written authority.

When any person empowered to distrain property under Article 104 or Article 106 shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority (which may be on plain paper) for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

ARTICLE **108.**

Act VIII (B.C.) of 1869, s. 71: Act X of 1859, s. 115.

Standing crops and crops gathered, but not stored, subject to distraint.

Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Digest. But no such crops or products other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator,

[7] There should be a similar provision as to rent due to the defaulting owners of tenures and under-tenures sold under Regulation VIII of 1819, Acts VIII (B.C.) of 1865 and VII (B.C.) of 1868.

and no other property whatsoever shall be liable to distraint under this Digest.

ARTICLE **109.**

Act VIII (B.C.) of 1869, s. 72: Act X of 1859, s. 116.

Defaulter to be served with a written demand, &c, before or at time of distraint.

Before or at the time when distraint is made under this Digest, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or, if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

ARTICLE **110.**

Act VIII (B.C.) of 1869, s. 73: Act X of 1859, s. 117.

Distress to be proportionate to arrear: list of property to be prepared.

Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

ARTICLE **111.**

Act VIII (B.C) of 1869. s 74: Act X of 1859, s. 118.

Standing crops, &c, when attached, to be reaped and stored by cultivator, or, if he omit to do so, by distrainer.

Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Crops or products which from their nature do not admit of being stored may be sold before they are cut or gathered under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products, or any part of the same, would be fit for cutting or gathering.

ARTICLE **112.**

Act VIII (B C.) of 1869, s. 75 : Act X of 1859, s. 119.

Distrainer may apply for aid to Court or Collector if resistance be made or apprehended.

If a distrainer shall be opposed, or shall apprehend resistance, and shall desire to obtain the assistance of a public officer, he may apply to the Court which, under the provisions of this Digest, would have jurisdiction to entertain a suit for the rent for which such distrainer is about to distrain, and the Court may, if it thinks necessary, depute an officer to support the distrainer in making the distraint.

ARTICLE **113.**

Act VIII (B.C.) of 1869, s. 77 : Act X of 1859, s. 121.

Distress to be withdrawn if defaulter tender payment of arrear and expenses of attachment prior to day of sale.

If at any time after property has been distrained and prior to the day fixed for its being put up to sale, as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

ARTICLE **114.**

Act VIII (B.C.) of 1869, s. 78 : Act X of 1859, s. 122.

Application for sale to be made within five days.

Within five days from the time of the storing of any distrained crops or products, or if the crops or products do not from their nature admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same. In the districts mentioned in Article 80 or 81 such application shall be made to the Court which would have jurisdiction to entertain a suit for the rent for which the distress was made. In the districts specified in Article 82 such application shall be made to the Civil Court Ameen or other officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public officer as the Local Government shall appoint for the purpose.

ARTICLE **115.**

Act VIII (B C.) of 1869, s. 79 : Act X of 1859, s. 123.

Form and contents of application.

Cost of notice upon defaulter to be deposited by distrainer.

The application shall be in writing, and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due, and the date of the distress, and the place in which the distrained property is deposited. The distrainer shall, with this application, lodge in Court or deliver to the Civil Court Ameen or other officer aforesaid, the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

ARTICLE **116.**

Procedure by Civil Court on receipt of application for sale.

When any application is made to a Civil Court under the provisions of the next preceding Article in the districts mentioned in Article 80 or 81, such Court shall appoint an officer to conduct the sale of such property, and shall cause to be served a notice, which shall be in the form shown in Schedule C annexed to this Digest, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before such Court within the period of fifteen days from the receipt of the notice; and shall at the same time cause to be affixed upon some conspicuous place in the Court-house a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. Act VIII (B.C.) of 1869, s. 80 : Act X of 1859, s. 124.

Procedure by Civil Court Ameen, &c., on receipt of application for sale.

When any such application is made to a Civil Court Ameen or other officer aforesaid in the districts specified in Article 82, such Civil Court Ameen or other officer shall transmit a copy of it to the Collector, and shall serve a notice, which shall be in the form shown in Schedule C annexed to this Digest, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He shall at the same time send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation so affixed or put up shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

ARTICLE **117.**

Sale to be suspended when suit instituted.

If, in any of the districts specified in Article 80 or 81, a suit shall be instituted in the Civil Court in pursuance of the aforesaid notice, such Court Act VIII (B C.) of 1869, s. 81: Act X of 1859, s. 125.

shall suspend proceedings in regard to the sale of the distrained property, and shall certify to the officer appointed to conduct the sale the fact of such suspension.

If in the districts specified in Article 82 a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court Ameen or other officer, or, if so requested, shall deliver to the owner of the distrained property a certificate of the institution of such suit; and on such certificate being received by or presented to the Ameen or other officer, he shall suspend proceedings in regard to the sale of the distrained property.

ARTICLE **118.**

Act VIII (B. C) of 1869, s. 82: Act X of 1859, s. 126.

Suit to contest distrainer's demand may be brought before issue of notice of sale.

Any person, whose property has been distrained in the manner in this Digest provided, may institute a suit to contest the demand of the distrainer immediately after the distraint of his property, and before the issue of notice of sale. When such suit is instituted in any of the districts mentioned in Article 80 or 81, the Court shall suspend proceedings in respect of the sale of such property.

When such suit is instituted in any of the districts specified in Article 82, the Collector shall proceed in the manner prescribed in the last preceding Article. If thereafter application is made for the sale of the property to the Civil Court Ameen or other officer, he shall transmit a copy of the application to the Collector and suspend further proceedings pending the decision of the case.

ARTICLE **119.**

Act VIII (B C) of 1869, s. 83: Act X of 1859, s. 127.

Distress to be withdrawn on receipt of Court's certificate that owner has executed a bond to pay amount of decree with interest and costs.

The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with sufficient security binding himself and his sureties to pay whatever sum may be adjudged to be due from him with interest and costs of suit; and when such bond is executed, the Court or Collector shall give to the owner of the property a certificate to that effect, or, if so requested, shall serve the distrainer with notice of the same; and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Court or Collector, the property shall be released from distraint.

ARTICLE **120.**

On expiration of period fixed in proclamation of sale, if institution of suit to contest distrainer's demand not certified, sale may proceed.

On the expiration of the period fixed in the proclamation of sale, if a suit to contest the demand of the distrainer has not been instituted and certified to the officer appointed to conduct the sale, or to the Civil Court Ameen or other officer as aforesaid, he shall, unless the said demand with such costs of the distress as shall be allowed by him be discharged in full, proceed to sell the property or such part of it as may be necessary in the manner hereinafter provided.

Act VIII (B.C) of 1869, s. 85: Act X of 1859, s. 128.

ARTICLE **121.**

Place and manner of sale of distrained property.

The sale shall be held at the place where the distrained property is deposited, or at the nearest gunge, bazar, haut, or other place of public resort, if the officer whose duty it is to conduct the sale should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots as the officer holding the sale may think advisable; and if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Act VIII (B.C.) of 1869, s. 86: Act X of 1859, s 129.

ARTICLE **122.**

If fair price be not offered, sale may be postponed to another day, and shall then be completed, whatever price may be offered.

If on the property being put up for sale a fair price in the estimation of the officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed until the next day, or the next market day, if a market be held at the place of sale, the sale shall be postponed until such day, and shall be then completed, whatever price may be offered for the property.

Act VIII (B C.) of 1869, s. 87: Act X of 1859, s. 130.

ARTICLE **123.**

Payment of purchase money! sale certificate.

The price of every lot shall be paid for in ready money at the time of sale, or as soon after as the officer holding the sale shall think necessary; and in default of such payment, the property shall be put up again and sold. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Act VIII (B. C.) of 1869, s. 88: Act X of 1859, s. 131.

ARTICLE **124.**

Act VIII (B.C.) of 1869, s. 89 : Act X of 1859, s. 132.

Proceeds of sale how to be disposed of.

From the proceeds of the sale of the distrained property the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale and shall transmit the amount to the Court or Collector in order that it may be credited to Government. He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in Article 116, to such amount as after examination of the statement of expenses furnished by the distrainer he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereupon up to the day of sale; and if there be any overplus, it shall be delivered to the person whose property shall have been sold.

ARTICLE **125.**

Act VIII (B.C.) of 1869, s 90 : Act X of 1859, s. 133.

Officers holding sales prohibited from purchasing property sold.

Officers holding sales of property under this Digest and all persons employed by or subordinate to such officers are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

ARTICLE **126.**

Act VIII (B.C.) of 1869, s. 91 : Act X of 1859, s. 134.

All irregularities to be reported to the Court or Collector.

Officers holding sales of distrained property are required to bring to the notice of the Court or Collector any material irregularities committed by distrainers under color of this Digest; and if in any case on proceeding to hold a sale of property such officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Court or Collector, and such Court or Collector shall direct the issue of another notice and proclamation of sale under Article 116, or pass such other order as may seem proper.

ARTICLE **127.**

Act VIII (B.C.) of 1869, s 92 : Act X of 1859, s. 135.

Recovery of expenses, if officer proceed to place of sale and no sale take place.

When any such officer has proceeded to any place for the purpose of holding a sale, and no sale takes place either for the reason stated in the last preceding Article or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to such officer, the charge of

one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property. If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property and may be recovered by the sale of such portion thereof as may be necessary. In all other cases such expenses shall be paid by the distrainer. In any of the districts mentioned in Article 80 or 81 the Civil Court shall make an order to this effect, and shall in such order fix the amount to be paid by him; and such amount may be recovered from such distrainer as if such order were a decree of such Court. In any of the districts mentioned in Article 82, the Collector shall make a similar order, and such expenses shall be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector. Provided that in no case shall a larger sum than ten rupees be recoverable for such expenses from such distrainer.

ARTICLE **128.**

Proceedings of Officers holding sales, subject to revision and orders of Court or Collector.

All proceedings under this Digest of the officers appointed to hold sales of distrained property or of the Civil Court Ameens or other officers as aforesaid shall be subject to the revision and orders of the Court or Collector to whom they are respectively subordinate; and the Court, or with the sanction of the Board of Revenue the Collector, may require the submission of such reports and statements of business by them performed as may be thought necessary.

Act VIII (B.C.) of 1869, s. 93: Act X of 1859, s. 136.

ARTICLE **129.**

Second proclamation of sale, if suit fail.

When a suit has been instituted to contest the demand of a distrainer, and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Court shall issue to the officer appointed to conduct the sale of such property, or the Collector shall issue to the Civil Court Ameen or other officer aforesaid, an order authorizing the sale of the property, and shall furnish a copy of such order to the distrainer; and on the application of the distrainer, which shall be made within five days from the receipt by him of such copy of such order, such officer shall publish a second proclamation in the manner prescribed in Article 116, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days

Act VIII (B.C.) of 1869, s. 94: Act X of 1859, s. 137.

from the date of the proclamation; and, unless the amount adjudged to be due with the costs of distress including any costs of suit which may be ordered to be paid by the person instituting such suit be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

ARTICLE **130.**

Act VIII (B.C.) of 1869, s. 95: Act X of 1859, s. 138.

Procedure upon institution of suit to contest distrainer's demand.

In all suits instituted to contest the demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself instituted a suit for the amount. If the demand or any part thereof is found to be due, the Court shall make a decree for the amount in favour of the distrainer, together with such costs of suit as to such Court may seem proper; and the amount may be recovered by sale of the property as provided in the last preceding Article, if the distress has not been withdrawn; and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter; or, if the property has been released on security, by execution of the decree against the person and property of the defaulter and of his surety. If on the other hand the distraint is adjudged to be vexatious or groundless, the Court besides directing the release of the distrained property may award such damages in favour of the plaintiff as the circumstances of the case shall seem to require, and may decree the costs of the suit to be paid by the distrainer.

ARTICLE **131.**

Act VIII (B.C.) of 1869, s. 96: Act X of 1859, s. 139.

Any person, whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer.

The words in brackets are not in Act X.

If any person shall claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person to try the right to [the possession of] the property in such Court and in like manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted, the property may be released upon security being given for the value of the same. If the claim is dismissed, the Court shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer, and for

payment of such costs of suit to such distrainer, as to such Court shall seem fit. If the claim is upheld, the Court shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require: provided always that no claim to any produce of land liable to distraint under this Digest, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land; nor shall any attachment in execution of a judgment or decree of any Court prevail against such prior claim.

ARTICLE **132.**

Value of claim in suits disputing distress.

The estimated value of the claim made in any suit filed under the provisions of Article 116, 118, or 131 in any of the districts mentioned in Article 80 or 81 shall be deemed to be the amount of arrears of rent for which the distraint shall have been made.

Act VIII (B.C.) of 1869, s. 84.

ARTICLE **133.**

Procedure if distrainer's right to distrain be disputed.

If in any of the districts specified in Article 82, when property has been distrained for an arrear of rent and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be enquired into, and the suit shall be decided according to the result of such enquiry: provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision.

Act X of 1859, s. 140.

ARTICLE **134.**

Procedure when person arrested for resisting distraint or removing distrained property.

If in any of the districts specified in Article 82 any person is arrested under the provisions of Article 73 for resisting a distraint, or for forcibly or clandestinely removing any distrained property, he shall be brought before the

Act VI (B.C.) of 1862, s. 18.

Collector with all convenient speed, and the Collector shall proceed forthwith to try the case. If the case cannot be at once heard and determined, the Collector may, if he think fit, require the person arrested to give security for his appearance whenever the same is required. In default of such security, the person arrested shall be committed to the Civil Jail until the case is heard.

SECTION IV.—*Summary Sale without Decree.*

ARTICLE **135.**

Reg. VIII of 1819, s. 8, cl 1.

Proprietors entitled to apply for summary sale of certain tenures.

Zemindars, that is, proprietors[8] under direct engagements with the Government, are entitled to apply in the manner hereinafter provided in Articles 136 and 138 for periodical sales of tenures, upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. The exercise of this power is not confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but applies equally to tenures held under engagements stipulating merely for a sale at the end of the year.

ARTICLE **136.**

Reg VIII of 1819, s. 8, cl. 2.

First sale may be applied for on 1st Baisakh.

[a] Act XXXIII of 1850, which dispensed with the petition to the Civil Court.

On the first day of Baisakh, that is, at the commencement of the following year from that of which the rent is due, the zemindar may present a petition to the Collector,[a] containing a stipulation of any balances that may be due to him on account of the expired year from all or any talookdars or other holders of an interest of the nature described in the Article next preceding.

Specification of balances due with notice to be stuck up at Collector's kachahri.

Such specification of the balances due shall then be stuck up in some conspicuous part of the kachahri, with a notice that, if the amount claimed be not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation. If the first of Jeth fall on a Sunday or holiday, the next subsequent day not a holiday shall be selected instead.

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[8] According to the Constructions of the old Sadr Court, a farmer cannot exercise these powers; and it has been doubted if Government can exercise them in estates under *khas* management. Can a *lakherajdar*?

Similar notice to be stuck up at zemindar's sadr kachahri and a further notice to be published on the land.

A similar notice shall be stuck up at the sadr kachahri of the zemindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the kachahri at which the business of the tenure is transacted,[a] or at the principal town or village upon the land of the tenure of[b] the defaulter. The zemindar shall be exclusively answerable for the observance of the forms above prescribed.

[a] 20 W. R. 132 : 21 W. R. 369 : Sadr Diwani Rep. 1849, p. 371.

Explanation.—Service upon the defaulter personally of the copy or extract of such part of the notice as applies to the individual case is not required, and is not a sufficient substitute for publication at the kachahri or at the principal town or village upon the land of the tenure.

[b] 9 B. L. R. 87 ; S. C. 17 W. R. 447 : I. L. R. 4. Calc. 41 : 2 C. L. R. 419.

ARTICLE 137.

Service, and attestation of service, of notice, directed to be published on the land in the Mofussil.

The notice required to be sent into the Mofussil shall be served by a single peon, who shall bring back the receipt of the defaulter or of his manager for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

Reg. VIII of 1819, s. 8, cl .2.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kachahri of the nearest munsif, or if there should be no munsif, to the nearest thana, and there make voluntary oath of the same having been duly published, a certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous[a] to the fifteenth of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

[a] I. L. R. 1 Calc. 175.

ARTICLE 138.

Second or mid-year sale may be applied for on 1st Kartik.

On the first day of Kartik in the middle of the year the zemindar shall be at liberty to present a similar petition to the Collector with a statement of any balances that may be due on account of the rent of the current year up to the

Reg. VIII of 1819, s. 8, cl. 3.

Sale to take place if arrear to date equal one-fourth or more of the annual rent.

end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters to take place on the first of Aghan, unless the whole of the advertized balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartik, to less than one-fourth or a four-anna proportion of the total demand of the zemindar, according to the kistbandi, calculated from the commencement of the year to the last day of Kartik.

ARTICLE **139.**

Reg. VIII of 1819, s. 14, cl. 1.

Sale not to be stayed unless arrear claimed be lodged.

If the balance claimed by the zemindar on account of the rent of the tenure remain unpaid upon the day fixed for the sale of such tenure, the sale shall be made without reserve, in the manner provided for in Articles 141 and 142; nor shall it be stayed or postponed on any account unless the amount of the demand be lodged.

Sadr Diwani Rep. 1859, p. 521 : 8 B. L. R. 134 : 24 W. R. 63.

Explanation.—It is not sufficient to lodge the amount of the demand in the Collectorate without notice to the zemindar, or without knowledge on his part that it had been lodged.

But suit will lie for its reversal.

It shall, however, be competent to any party desirous of contesting the right of the zemindar to make the sale, whether on the ground of there having been no balance due or on any other ground, to sue the zemindar for the reversal of the same, and upon establishing a sufficient plea to obtain a decree with full costs and damages.

6. W. R. Civ. Rul. 321.

The purchaser shall be made a party to such suits, and upon making a decree for reversal of the sale the Court shall be careful to indemnify him against all loss at the charge of the zemindar or person at whose suit the sale may have been made.

Illustrations.

In the following cases a sufficient plea is established:—

9. B. L. R. 95.

(*a*).—A, a *patnidar*, sues for the reversal of the sale of his *patni* on the allegation that no notice was stuck up in a conspicuous part of the Collector's kachahri, as required by Article 136, and this allegation is found to be true.

9. B. L. R. 95 : 21 W. R. 252 : I. L. R. 4 Calc. 41.

(*b*).—A, B, and C, joint owners of a *patni* tenure, sue for the reversal of the sale of such *patni* on the allegation that no copy or extract of the notice was published at the kachahri or at the principal town or village upon the land as required by Article 136. This allegation is found to be strictly true

although it appears that a copy of the notice was served on A and B personally.

In the following case a sufficient plea is not established:—

(*c*).—A, a *patnidar*, sues for the reversal of the sale of his *patni* on the ground that no copy or extract of the notice was published at the kachahri or at the principal town or village upon the land, as required by Article 136. It is found that the copy or extract of the notice was published in the manner required by Article 136; but that the peon did not bring back the receipt of the defaulter, or of his manager, or of three substantial persons residing in the neighbourhood, as required by Article 137, nor did he, as required by the same Article, make a voluntary oath before the nearest munsif, or at the nearest thana, that the copy or extract had been duly published. 9 W. R. 242 : L. R. 2 I. A. 71 : S. C. 23 W. R. 113 : 24 W. R. 129.

ARTICLE **140.**

Defaulter may apply for summary investigation before sale.

In any case in which a tenure-holder contests the zemindar's demand of an arrear as specified in the notice advertised, such tenure-holder shall be competent to apply for a summary investigation at any time within the period of notice. The zemindar shall then be called upon to furnish his kabuliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale. Reg. VIII of 1819, s. 14, cl. 2.

But sale not to be stayed unless amount of rent claimed be deposited.

Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and if the zemindar or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government securities, or in notes of the Bank of Bengal, by the tenure-holder contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy but by a regular action for damages, and for a reversal of the sale.

The omission to apply for a summary investigation under this Article shall not preclude the tenure-holder from bringing such regular action. 7 W. R. Civ. Rul. 219.

ARTICLE **141.**

Lots to be sold in order. Zemindar's agent to be present with account and receipt for notice.

At the time of the sale the notice previously stuck up in the kachahri shall be taken down, and the lots shall be called up successively in the order in which they may be found in that notice. A person shall attend on the Reg. VIII of 1819, s. 10.

part of the zemindar with a particular statement of the payments made up to the day of sale on account of the balance of each advertised lot, together with the receipt for or certificate of the notice directed to be published in the Mofussil; nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read, the observance of which forms shall be recorded in a separate rúbakárí to be held upon each lot sold.

If the sale be of the description provided for in Article 138, the kistbandi of the defaulter shall likewise be produced in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The zemindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect except for its fairness and publicity, and for the observance of the rules prescribed in this Digest for his guidance.

ARTICLE 142.

Act VIII (B.C.) of 1865, s. 3.

Sale to be held by Collector in public kachahri: procedure to be observed at sale.

The sale shall be conducted in public kachahri by the Collector of land revenue within whose Collectorate the lands comprised in the tenure are situate. The tenure shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter. Fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

Reg. VIII of 1819, s. 9.

If the fifteen per cent. be not paid in cash or in notes of the Bank of Bengal within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase money be not paid by noon of the eighth day, notice shall be given of resale on the following day, that is,

on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the Sadr Station of the Zila, after which the lot shall be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per centum already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one. Such deficiency shall be levied by the process for the execution of decrees of the Civil Courts.

The forfeited deposit of fifteen per centum shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government. Act XXV of 1850, s. 2.

ARTICLE 143.

Any talook or saleable tenure, that may be disposed of at a public sale under the rules contained in Articles 135 to 142 inclusive for arrears of rent due on account of the same, is hereby declared to be sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said talook may have been held. Reg VIII of 1819, s. 11.

Tenure declared to be sold free of incumbrances created by act of defaulter.

No transfer by sale, gift, or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the zemindar to hold the tenure of his creation answerable in the state which he created it for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect under express authority obtained from such zemindar.

In like manner, on sale of a tenure for arrears, all leases originating with the former holder of the tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them have been specially transferred. The possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the ryots, this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

All leases granted by defaulter are cancelled by sale.

Provided, nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a talook or other saleable tenure intermediate between the zemindar and actual cultivators, to eject a khoodkasht ryot or resident and hereditary cultivator, nor to cancel *bonâ fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

Exception in favour of *bonâ fide* engagements with ryots.

ARTICLE **144.**

Reg. VIII of 1819, s. 15, cl. 1.

The purchaser, as soon as he has paid the full amount of the purchase-money, shall receive from the officer conducting the sale a certificate of such payment.

Certificate to be given to purchaser on payment of full amount of purchase-money.

Such purchaser may then proceed with such certificate to procure a transfer of the tenure to his name in the kachahri of the zemindar, and upon furnishing security, if required, to the extent of half the jama or annual rent, he shall receive the usual amaldastak or order for possession, together with a notice to the ryots and others to attend and pay their rents henceforward to him.

Zemindar bound to put him in possession.

The zemindar shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his kachahri; and should he in any manner delay the transfer in his office or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Collector,[a] and he shall receive the orders for possession, and shall be put in possession of the land by means of the Nazir, in the same manner as possession is obtained under a decree of Court: provided, however, that if the delay be on account of the zemindar's contesting the sufficiency of the security tendered, the rule contained in Article 28 shall be observed.

[a] Act VIII (B.C.) of 1865, s. 3.

Purchaser's remedy if zemindar refuse or delay to put him in possession.

ARTICLE **145.**

Reg. VIII of 1819, s 15, clauses 2 and 3.

When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself or the holders of tenures or assignments derived from such late incumbent, and intermediate between him

Procedure in case of opposition to purchaser by defaulter or persons claiming under him.

and the actual cultivators, shall attempt to offer opposition or to interfere with the collections of such new purchaser from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Collector[b] for the aid of the public officers in obtaining possession of his just rights.

[b] Act VIII (B C.) of 1865, s. 3.

A proclamation shall then issue under the seal and signature of the Collector,[b] declaring that the new incumbent having by purchase at a sale for arrears of rent due to the zemindar acquired the entire rights and privileges attaching to the tenure of the late talookdar in the state in which it was originally derived by him from the zemindar, he alone will be recognised as entitled to make the zemindari collections in the Mofussil, and no payments made to any other individual will on any account be credited to the ryots or others in any suit for rent or on any other occasion whatever when the same may be pleaded.

Procedure in case of continued opposition by defaulter or his under-tenants.

Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police officers and of all other public officers, who may be at hand and capable of affording assistance, shall be given to the new purchaser on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

ARTICLE **146.**

Rules for disposal of the sale proceeds.

The following rules shall be observed in disposing of the proceeds of the sale:— Reg. VIII of 1819, s. 17, cl. 1.

One per cent to be credited to Government.

(1).—One per centum shall first be deducted from the net proceeds realized, and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions contained in Articles 135 to 145 inclusive. Reg VIII of 1819, s 17, cl. 2

Zemindar's claim for rent to be next satisfied: proviso.

(2).—The arrears on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the talook to sale) to the zemindar or Reg. VIII of 1819, s. 17, cl. 3.

other person to whom the same may be due: provided, however, that no former arrears beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year) shall be included in the demand to be thus satisfied. Such antecedent arrears, if the zemindar have omitted to recover them by summary sale at the time, shall be regarded as personal debts of the individual talookdar, and can be recovered only in the same manner as other debts by a regular suit in Court.

Reg. VIII of 1819, s. 17, clauses 4, 5, and 6.

Balance to be sent to Government treasury to meet claims of persons endamaged by sale.

(3).—Any excess that may remain after satisfying the demand of the zemindar shall be sent by the officer conducting the sale to the Government Treasury that it may be available in the manner provided by clause (*b*) of Article 35 to satisfy the claims of persons endamaged by the sale of the tenure.

Reg. VIII of 1819, s. 17, cl. 7.

Defaulter entitled, if no claims, or after claims have been satisfied.

(4).—If no claims upon the balance of the sale proceeds be brought forward by any under-tenants or assignees within the period of two months from the date of sale, or if the amount claimed by those who may have sued do not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit, and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt. In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Regulation VIII of 1819, s. 17, cl. 8.

Substitution of Government securities for cash in deposit.

It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof on substituting Government securities bearing interest, in lieu of the money so

held in deposit. Such securities shall be taken at the rate of discount or premium of the day, as shown by the *Government Gazette* last received.[9]

ARTICLE **147.**

Rules for the exercise of jurisdiction in Summary Sales by the Revenue Authorities.

The exercise of jurisdiction by the Revenue authorities under Articles 135 to 146 inclusive shall be regulated by the following rules;—

(1).—If the lands included in the tenure be all situate in one Collectorate, the Collector of such Collectorate shall conduct the sale and otherwise exercise jurisdiction. Act VI of 1853, s. 1.

(2).—If the lands included in the tenure be situate in two or more Collectorates, the Collector in whose Collectorate the greater portion of such lands is situate shall conduct the sale and otherwise exercise jurisdiction. Act VI of 1853, s. 1.

(3).—In any case in which a Collector entertains any doubt as to whether the lands or the greater part of them are situate within his Collectorate, he shall report the case for the order of the Board of Revenue; and if he is ordered by such Board to proceed in the matter, such order shall be conclusive upon the question of his jurisdiction. Act VI of 1853, s. 2.

(4).—When a Deputy Collector is appointed by Government to act independently of a Collector, whether his office is one for the receipt of revenue Act VI of 1853, ss. 4, 5, 6, and 7.

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[9] See the note to paragraph 12, Article 12 at foot of page 21 *ante*: and consider what would be the result if a *patni talook* were sold, in execution of a decree for its own rent, under the ordinary provisions of the Code of Civil Procedure. According to the case at L. R. 6, I. A. 47, there would be no avoidance of incumbrances. In the case at L. R. 1, I. A. 178, the sale is stated in the report to have been made under Regulation I of 1820, and Act VIII of 1835 (page 180) and under section 105 of Act X of 1859 (page 183). The sale, it will be observed, was in execution of a decree obtained in the Collector's Court. Suppose the decree were a decree of the Civil Court, could the Collector have held the sale? Would Regulation I of 1820 have applied? See page 191 of the report and mark the words "probably also of Regulation I of 1820." As to Regulation I of 1820, see also B. L. R. F. B. 649-50. Regulation I of 1820 enacts that whenever the proprietor of an estate paying revenue to Government shall desire to cause any tenure of the nature of those described in clause first, section 8, Regulation VIII, 1819, to be sold for arrears of rent due to him on account thereof, and shall *under any summary process authorized by the general regulations* have acquired the right of causing such sale to be made, the same shall be conducted, after application from the zemindar, in the mode prescribed by Regulation VIII for periodical sales: ten days' notice of sale shall be given by proclamation to be stuck up at the kachahri of the Civil Court and at that of the Collector. The provisions of sections 9, 11, 13, 15, and 17 of Regulation VIII of 1819 (Articles 142, 143, 35, 36, 144, 145, and 146) are extended to such sales. There is not at present in force any *summary process authorized by the general regulations* (see page 513 and following pages of my edition of the Bengal Regulations). Is it possible to apply these words to a sale in execution?

or not, such Deputy Collector shall be deemed a Collector, and the Deputy Collectorate or district within which he is directed by Government to act, shall be deemed a Collectorate within the meaning of the rules contained in this Article. Such independent Deputy Collector may exercise his powers in public kachahri held in any part of his Deputy Collectorate. Any notice required to be stuck up at the kachahri of the Collector may be stuck up at the kachahri of such Deputy Collector.

ARTICLE **148.**

Reg. XXIX of 1814, s. 5.

Recovery of arrears of rent from Beerbhoom Ghatwals by sale of tenure, &c.

If any of the Ghatwals in the district of Beerbhoom fail to discharge their stipulated rents, it shall be competent for the Lieutenant-Governor of Bengal—

(*a*)—to cause the ghatwali tenure of such defaulter to be sold by public sale in satisfaction of the arrears due from him, in like manner and under the same rules as lands held immediately of Government; or

(*b*)—to make over the tenure of such defaulter to any person whom the said Lieutenant-Governor may approve, on condition of making good the arrear due; or

(*c*)—to transfer it by grants assessed with the same rent, or with an increased or reduced assessment, as to the Government may appear meet; or

(*d*)—to dispose of it in such other form or manner as shall be judged proper by the said Lieutenant-Governor.

SECTION V.—*Suit, Decree, and Execution.*

ARTICLE **149.**

Act VIII (B C.) of 1869, s 43 · Act VI (B C.) of 1862, s. 12.

Form of plaint in suits for arrears of rent.

In any suit brought for the recovery of an arrear of rent, the plaint shall specify the name of the village and estate, and of the pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due. If the arrear is alleged to be due from any ryot, the plaint

shall further specify the quantity of land, and where fields have been numbered in a Government survey, the number (if it be possible to give it) of each field. Such plaint shall be filed, in any of the districts mentioned in Article 80 or 81, in the Civil Court; and, in any of the districts specified in Article 82, in the Revenue Court; and the proceedings thereupon to final judgment and decree, and subsequently in execution, shall be regulated in the Civil Courts by *The Civil Courts' Procedure*, and in the Revenue Courts by *The Revenue Courts' Procedure* hereafter contained in this Digest, and by the other provisions of this Digest applicable to both Civil and Revenue Courts and their proceedings.

Plaint in what court to be filed. Proceedings thereon.

ARTICLE **150.**

Whenever a notice has been served under the provisions of section 6 of "The District Road Cess Act, 1871," upon the holder of an estate or tenure calling upon him to make the return required by the said Act, such holder of an estate or tenure shall, after the expiry of three months from such service or of such extended period as may be allowed by the Collector under the provisions of the said section of the said Act, be precluded from suing for or recovering any rent in respect of any land or tenure which shall be proved not to have been included in the return lodged by him, or in respect of which no return shall have been lodged or valuation made by the Collector, and from recovering rent for tenures subsequently created, or in excess of the sum mentioned in such return without proof of the creation of such tenure or of enhancement subsequent to such lodgment.

Act X (B.C.) of 1871, ss. 6, 7, and 92.

Holder of estate or tenure on expiry of three months after service of notice calling for return required by Road Cess Act, precluded from suing for or recovering rent for land or tenure not included in his return.

Definitions.—The word "estate" in this Article means—

Act X (B.C.) of 1871, s. 3.

(1)—any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the Register known as the General Register of all Revenue-paying Estates, or in respect of which a separate account may, in pursuance of section 10 or section 11 of Act XI of 1859, have been opened;

(2)—any land or share in land entered in the Register of Revenue-free Tenures;

(3)—any land, the revenue or rent of which may be payable directly to the Collector or any person specially appointed by him to collect the same;

(4)—any land acquired under any rules issued by, or under authority of, Government for the sale, grant, or clearance of waste lands.

The word "tenure" in this Article means and includes every interest in land, whether rent-paying or not, save an estate as above defined, and save the interest of a cultivating ryot.

"Land" means land which is cultivated, uncultivated, or covered with water.

ARTICLE 151.

Act VIII (B.C.) of 1869, part of s. 59: Act X of 1859, part of s. 105: Act VIII (B.C.) of 1865, part of s. 4. 1 B. L. R. A. C. 217; S. C. 10 W. R. 341: 4 W. R. Act X, 5: 25 W. R. 156.

Application may be made for sale of transferable tenure or under-tenure in execution of decree for arrears of its own rent.

Whenever a decree is passed for an arrear of rent due in respect of a [tenure or] under-tenure which by the title-deeds or the custom of the country is transferable by sale, such decree may be executed in the first instance (*a*) against the person of the judgment-debtor: or (*b*) by attachment and sale of his movable property: or (*c*) by attachment and sale of such tenure or under-tenure. If the judgment-creditor make application for the attachment and sale of such [tenure or] under-tenure[1] to the Court or Collector whose duty it is to execute such decree, such Court or Collector may upon such application make an order that such tenure or under-tenure be sold under the rules contained in Articles 152, 153, 154, and 155:

Act VIII (B.C.) of 1869, part of s. 61: Act X of 1859, part of s. 105.

Under-tenure not to be sold while other execution in force.

provided that no order for the sale of any such [tenure or] under-tenure may be made in execution of a decree for recovery of arrears of rent payable in respect thereof, when a warrant of execution has been previously issued against the person or movable property of the judgment-debtor, so long as such warrant remains in force:

Act VIII (B.C.) of 1869, s. 64: Act X of 1859, s. 108.

Proviso if decree be in favour of sharer in undivided estate or tenure.

provided also that, if the decree be in favour of a sharer in a joint undivided estate, dependent talook, or other similar tenure, for money due to him on account of his share of the rent of any such [tenure or] under-tenure situate in such undivided estate, talook, or tenure, no order for the sale of such [tenure or] under-tenure in execution of such decree may be made unless and until all

[1] The following words here occur in section 105 of Act X of 1859, viz.—"The tenure may thereupon be brought to sale in execution of the decree according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force." These words were not expressly repealed by Act VI (B.C.) of 1862; but they have not been reproduced in Act VIII (B.C.) of 1869. As to their effect, see L. R. 1 I. A. 189; B. L. R. F. B. 650.

movable property (if any), which such judgment-debtor may possess within the jurisdiction of the Court in which or of the Collector before whom the suit was instituted, shall have been seized and sold in execution of such decree, and the sale of such property (if any) shall have proved insufficient to satisfy the judgment. Thereupon, and not before, such [tenure or] under-tenure may be attached and sold in execution of such decree, but such sale shall be according to the ordinary procedure for the sale of immovable property in execution, and shall have such and the same effect as the sale of any immovable property sold in execution of a decree not being a decree for arrears of rent payable in respect thereof.

5 W. R., Act X, 71: 15 W. R. 6: L. R. 6 I. A. 47: 1 C. L. R. 460: 3 C. L. R. 245, 561.

ARTICLE **152.**

When such Court or Collector has made an order directing such sale of such [tenure or] under-tenure, there shall be hung up in some conspicuous part of the building in which such Court or Collector sits, and of the buildings in which the Collector and Judge of the district sit, within which the land comprised in such [tenure or] under-tenure is situate, and there shall be affixed on some conspicuous place on such land and on some conspicuous place in the town or village in or nearest to which such land is situate, a notice for the sale of such [tenure or] under-tenure on some fixed date not less than twenty days from the hanging up of such notice in such Court.

Upon order of sale being made, notice of sale how to be published.

Act VIII (B.C.) of 1869, part of section 59: Act VIII (B.C.) of 1865, part of section 4.

Every such notice shall specify, in the words used in the plaint in the suit in which the decree was made, the name of the village, estate, and pergunnah, or other local division in which the land comprised in the said [tenure or] under-tenure is situated, the yearly rent payable in respect thereof, and the gross amount recoverable under the said decree.

Contents of notice.

Act VIII (B.C.) of 1869, s. 60: Act VIII (B.C.) of 1865, s 5.

ARTICLE **153.**

If after attachment and before sale of any such [tenure or] under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of the same any third party prefers a claim, alleging that such third party and not the person against whom the decree has been obtained is the proprietor of such [tenure or] under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Court or Collector shall not postpone such

If third party claim to be lawful possessor of such tenure or under-tenure, Court or Collector to stay sale and adjudicate upon such claim, if amount of decree be deposited, or security be given therefor.

Act VIII (B.C.) of 1869, s. 63: Act X of 1859, s. 106. Under the latter section, the Collector is to examine such third party, and is to stay the sale "if he see sufficient reason for so doing."

sale, unless and until such third party deposit in Court the amount of the decree, or give sufficient security for the same: provided always that no transfer of a [tenure or] under-tenure which by the provisions of any law for the time being in force is required to be registered in the sherishta of the proprietor or superior tenant, shall be recognized unless it has been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Court or Collector.

Non-registered transfers not to be recognized.

Act X of 1859, s. 107.

In trying such claim in any of the districts specified in Article 82, the Collector shall be guided by the rules hereinafter contained and called "*The Revenue Courts' Procedure*," so far as the same may be applicable, and the judgment passed by the Collector on such claim shall not be subject to appeal, but the party against whom it is given may bring a suit in the Civil Court to establish his right at any time within one year from the date of the judgment.[2]

Collector's procedure in adjudicating on such claim.

Explanation.—The decision of the Court or Collector upon such claim will not be invalid merely because the sale was postponed without the amount of the decree having been deposited in Court, or sufficient security given for the same.

20 W. R 10.

ARTICLE **154.**

If the sum due under the decree, together with interest to date of payment, and all costs of process be paid into Court or to the Collector at any time before the sale commences, whether by the defaulting holder of the [tenure or] under-tenure, or any one on his behalf, or any one interested in the protection of such [tenure or] under-tenure, such sale shall not take place; and the provisions of Article 36 for the recovery of sums paid by persons other than the defaulting holder of a tenure to stay the sale of such tenure shall be applicable to all similar payments made under this Article.

Sale may be stayed by person interested in under-tenure paying into court amount of decree.

Act VIII (B C.) of 1869, s. 62 · Act VIII (B.C.) of 1865, s 6.

Explanation I.—The transferree of a [tenure or] under-tenure, whose transfer has not been registered in the sherishta of the proprietor or superior tenant, is a person interested in the protection of such [tenure or] under-tenure within the meaning of this Article: and if he pay into Court

B. L. R F. B 519; S C. 6 W. R. Act X, 59 20 W. R. 59.

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[2] There is no similar express provision in Act VIII (B.C) of 1869 It was doubtless intended that the provisions of the Code of Civil Procedure should apply. But is such a claim a "suit" or "a proceeding therein" within the meaning of section 34 of Act VIII (B.C.) of 1869?

or to the Collector the sum due under the decree before the sale commences, he shall be entitled to maintain a suit for the reversal of the sale, if such [tenure or] under-tenure be sold notwithstanding such payment. No such transferree whose transfer has not been registered as aforesaid, and who has not proceeded under Article 153 and shown sufficient cause for non-registration to the satisfaction of the Court or Collector, or paid the amount of the decree with interest and costs into Court under this Article, shall be entitled to maintain a suit for the reversal of the sale.

12 B. L. R. 484; S. C. 21 W. R. 94 (Full Bench). But consider the case of fraud, and see 7 W. R. 183; S. C. B. L. R. F. B 625: and, as to the purchaser being safe, unless privy to the fraud, 7 B. L. R. Appen. 1.

Explanation II.—Any person interested in the protection of a [tenure or] under-tenure, who pays money into Court under this Article, may sue for the amount as money lent, and recover it in such suit from the holder of the [tenure or] under-tenure, the sale of which was stayed by the payment.

4 B. L. R. F. B. 77; S. C. 13 W. R. F. B. 1.

ARTICLE **155.**

Act VIII (B.C.) of 1869, s. 66: Act VIII (B.C.) of 1865, s. 16.

Purchaser to acquire tenure or under-tenure, with certain exceptions, free of incumbrances.

The purchaser of a [tenure or] under-tenure under the provisions of Articles 151 and 152, shall acquire it free of all incumbrances which may have accrued thereon by any act of any holder of such [tenure or] under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which such tenure or under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees:

provided that nothing herein contained shall be held to entitle the purchaser to eject khoodkhast ryots or resident and hereditary cultivators, nor to cancel *bonâ fide* engagements made with ryots or cultivators of the classes aforesaid by any holder of the [tenure or] under-tenure or his representatives, except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.

Nothing in this Article shall be held to apply to the purchase of a [tenure or] under-tenure by the previous holder thereof, through whose default the tenure was brought to sale, or to a person acting in fraudulent collusion[a] with the defaulter for the purpose of freeing the [tenure or] under-tenure from incumbrances.

[a] 9 B. L. R. 220.

ARTICLE **156.**

Act VIII (B.C.) of 1869, s. 67: Act VIII (B.C.) of 1865, s. 17.

Proprietor how to proceed if purchaser do not register.

The purchaser of a [tenure or] under-tenure sold under Articles 151 and 152 may apply to the proprietor or other superior landlord within fifteen days from the day of sale to have his name registered in such proprietor's or landlord's books as the purchaser, and shall execute a kabuliyat on the same terms and conditions on which the [tenure or] under-tenure was held by the defaulter; and if such application be not made within fifteen days, it shall be lawful for the proprietor or other landlord to sue the said purchaser for the delivery of a kabuliyat.

ARTICLE **157.**

Act VIII (B.C.) of 1869, part of s. 61: Act X of 1859, part of s. 105.

If decree not satisfied by sale of tenure or under-tenure, execution may be had against debtor's other property.

If, after sale of any such [tenure or] under-tenure in execution of such decree, any portion of the amount decreed remains due, process may be applied for and issued against any other property, movable or immovable, belonging to the debtor.

SECTION VI.—*The Revenue Authorities' Summary Procedure.*

ARTICLE **158.**

Act VII (B.C.) of 1868, s. 11, as amended by Act II (B.C.) of 1871. "Rent" has been substituted for "revenue," which, as defined in s. 1 of the former Act, includes rent.

Tenure may be sold by Collector for arrears of rent due to Government.

Whenever any rent payable to Government in respect of any tenure not being an estate shall be in arrear after the latest day of payment fixed in the manner prescribed in section 3 of Act XI of 1859, the Collector to whom such rent is payable may cause the tenure to be sold in the manner and subject to the provisions in and by the said Act XI of 1859 provided for the sale of estates for the recovery of arrears of revenue, and the Collector shall apply the purchase-money arising from such sale according to the provisions of section 31 of the said Act XI of 1859, except that the residue, if any, shall be held in deposit on account of the holder of the tenure and not on account of the proprietor of the estate; and every such Collector shall, upon every such sale of any tenure being final and conclusive, give to the purchaser thereof such certificate of the title thereof as is provided in section 28 of the said Act XI of 1859 with respect to estates:

provided that no tenure shall be sold for the recovery of arrears of rent other than those of the current year or of the

year immediately preceding, nor for the recovery of arrears of rent due by tenures under attachment by order of any judicial authority, unless and until after a notification in the language of the district, specifying the nature and amount of the arrear and the latest date on which payment thereof shall be received, shall have been fixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of Act XI of 1859 in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Moonsiff's court and Police thana of the division in which the tenure to which the notification relates is situated, or if the tenure be situated within the jurisdiction of more than one Moonsiff's court or Police thana, in some one or more of such courts or thanas, and also at the kachahri of the malgoozar or owner of the tenure, or at some conspicuous place upon the tenure, the same to be certified by the peon or other person employed for the purpose.

The word "estate" in this Article means any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the Register known as the General Register of all Revenue-paying Estates, or in respect of which a separate account may, in pursuance of section 10 or section 11 of the said Act XI of 1859, have been opened. Act VII (B.C.) of 1868, s. 1.

The word "tenure" in this Article includes all interests in land, whether rent-paying or lakheraj, other than estates as in this Article defined, and all fisheries, which by the terms of the grants creating the same, or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been especially reserved by stipulation in any instrument. Act VII (B.C.) of 1868, s. 1.

ARTICLE **159.**

The purchaser of a tenure sold under Article 158 shall acquire it free from all incumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all tenures and under-tenures, and forthwith to get all tenure-holders and undertenure-holders with the exceptions specified in Article 12, paragraph 11. Such purchaser may exercise the rights of enhancement Act VII (B.C.) of 1868, s. 12.

Purchaser to acquire tenure free from all incumbrances. Exceptions.

Act VII (B.C.) of 1868, s. 13.
Act VII (B.C.) of 1868, s. 14.

defined in Article 91, provided always that nothing herein contained shall be construed to entitle any such purchaser to eject any ryot having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

ARTICLE **160.**

In the following cases, that is to say—

Act VII (B.C.) of 1868, s. 15.

1—when a tenure has been sold under Article 158 and the proceeds of the sale after defraying therefrom the expenses of such sale are insufficient for the liquidation of all the arrears of rent payable from such proceeds, and the Collector desires to realize the amount of such arrears so remaining unliquidated:

When a balance still remains due after sale of tenure:

Act VII (B.C.) of 1868, s. 1, definition of "demand."

2—when arrears of rent payable to Government are due in respect of any tenure as defined in Article 158, and the Collector does not think fit to proceed for the recovery of such arrears by sale of the tenure under the said Article:

when arrears are due to Government on tenure, and Collector does not think fit to sell it:

Act I (B.C.) of 1875.

3—when arrears of rent payable to Government are due from any ryot, or from any person holding any interest in land, pasturage, forest rights, fisheries, and the like, which, by the terms of the contract creating the same, or by the custom of the country, is not transferable:

when arrears are due to Government from ryot or holder of non-transferable interest:

Act I (B.C.) of 1875.

4—when arrears of rent payable to a Collector in charge of an estate or tenure on behalf of a private person are due from any ryot, or from any person holding any [non-transferable[a]] interest in land, pasturage, forest

and when arrears are due to Collector in charge of estate for private person from ryot, &c.,

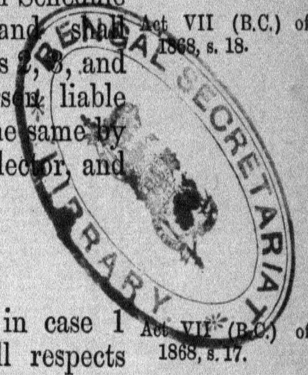
[a] The insertion of the word in brackets is warranted by the Preamble which recites that it is expedient to provide "for the summary realization of arrears of revenue or rent due from ryots and other persons holding *non-transferable* interests in land in estates managed by the Government." And see the speech of the hon'ble member in charge of the Bill, at page 179 of the *Supplement to the Calcutta Gazette of the 3rd February* 1875.

rights, fisheries, and the like, created by a Collector in charge of an estate or tenure as aforesaid and held direct from such Collector or his successor in office:

the Collector of the district shall make under his hand a certificate of the amount of such arrears so remaining unpaid, in the form in Schedule D annexed to this Digest, and shall cause the same to be filed in his office. In cases 2, 3, and 4 such certificate shall not be made unless the person liable to pay such arrears has been required to pay the same by a notice in writing under the hand of the Collector, and until one month has elapsed after such requisition.

Collector may make a certificate of such arrears.

Act VII (B.C.) of 1868, s. 18.



ARTICLE **161.**

Such certificate so made under Article 160 shall in case 1 of the said Article have in all respects the force and effect of a decree of a Civil Court: and in cases 2, 3 and 4 of the said Article shall, as regards the remedies for enforcing the same and subject to the provisions contained in Articles 162 to 167 inclusive, and so far only, have the force and effect of a decree of a Civil Court. In all four cases the Government shall be deemed to be the plaintiff, and the person named as debtor in the certificate shall be deemed to be the defendant.

Certificate to have the effect of a Civil Court decree in which Government is decree-holder.

Act VII (B.C.) of 1868, s. 17.

Act VII (B.C.) of 1868, s. 20.

Explanation.—A certificate made in case 2, 3, or 4 may be contested in a Civil Court upon the merits or upon the ground that the proceedings of the Collector were not conducted in due form.

Supplement to the *Calcutta Gazette* of the 15th July 1868, page 524: I. L. R. 3 Calc. 771.

ARTICLE **162.**

The Collector shall, forthwith upon filing any certificate, issue to the defendant a notice in the form shown in Schedule E annexed to this Digest. From and after the service of such notice, the certificate shall bind the immovable property of such defendant situate within the jurisdiction of such Collector as if a prohibitory order had issued and an attachment been executed against such property under the Code of Civil Procedure; and shall also in like manner bind the immovable property of such defendant situate within the jurisdiction of any other Collector, in whose office a copy of such certificate may be filed, from the time of filing such copy.

Notice of certificate to be served on the defendant.

Act VII (B.C.) of 1868, s. 21.

ARTICLE **163.**

Act VII (B.C.) of 1868, s. 22.

Any person who may be aggrieved by any such certificate may, within one month from the day on which the notice mentioned in Article 162 shall have been served, apply by petition in the form shown in Schedule F annexed to this Digest, to the Collector by whom such certificate may have been issued, that the same may be set aside or modified or varied. Such Collector, after receiving such application, shall fix a day for the hearing of such application, and shall upon the day appointed for hearing such application, or on any other day to which such hearing may be adjourned, proceed to hear and determine the application of such applicant, and may set aside or modify or vary such certificate; and every such Collector shall, for hearing and determining any such application, have all the powers in and by the Code of Civil Procedure conferred upon the Court for the hearing and determination of claims to attached property, and for enforcement of the costs of such claim; and in case such Collector shall direct the payment of such costs by such applicant, the amount of such costs shall, if the applicant be the defendant, be added to the amount expressed in such certificate, and be recoverable as if the same had been originally contained therein.

Objection to certificate may be made within one month after service of notice.

Procedure upon such objection being filed.

ARTICLE **164.**

Act VII (B.C.) of 1868, s. 23.

Every order made by any Collector upon any such application shall be appealable to the Commissioner: provided always that no appeal against any such order shall be brought after the expiration of one month from the date of the passing of such order.[4]

Appeal against Collector's order may be made to the Commissioner within one month.

ARTICLE **165.**

Act VII (B.C.) of 1868, s. 24.

Every certificate made under the provisions of Article 160 may be enforced by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement of decrees for money; and all the practice and procedure provided by the said Code of Civil Procedure, or by any Act for the time being in force in respect of sales in execution of decrees, in respect of arrests in execution of decrees for money, in respect of the execution of decrees by

Procedure for enforcing certificate.

[4] The time necessary for obtaining a copy of the Collector's order should be deducted in computing the period of one month.

imprisonment, in respect of claims to attached property, and in respect of execution of decrees out of the jurisdiction of the Courts by which they were passed, shall apply to every execution issued for levying the moneys expressed in such certificate, save that all the duties, powers, and authorities by the said Code imposed or conferred upon the Court shall be exercised by the Collector in whose office any such certificate has been filed, or to whom any such certificate has been sent under the provisions of sections 223 and 224 of the said Code.

ARTICLE **166.**

Register of certificates to be kept in Collector's office, and to be open to inspection.

Every Collector shall cause to be kept in his office a book in such form as shall from time to time be prescribed by the Government of Bengal, and shall cause to be entered therein the particulars of every certificate which, or a copy of which, may be filed in his office under the provisions of Articles 160, 162 and 165. Every such book shall be open to the inspection of any person desiring to see the same during office hours upon payment of a fee of eight annas. Act VII (B.C.) of 1868, s. 25. Act VII (B.C.) of 1868, s. 26.

ARTICLE **167.**

Satisfaction to be entered when amount of certificate paid.

Whenever the amount due upon any such certificate shall be fully paid and satisfied, the Collector in whose office such certificate may be filed, shall enter satisfaction upon such certificate under his own hand and signature, and shall transmit to any Collector in whose office a copy of such certificate may have been filed a memorandum of such satisfaction. Act VII (B.C.) of 1868, s. 27.

Transmission of sums received in office in which copy filed.

Whenever any sum shall be levied or received by any Collector in respect of any certificate, a copy of which may have been filed in his office under the provisions of Article 162 or 165, such Collector shall transmit such sum to the office in which such certificate may be filed. Act VII (B.C.) of 1868, s. 28.

NOTE.—Under the provisions of section 75 of "The Court of Wards' Act," IV (B.C.) of 1870, farmers and others holding tenures in estates in charge of the Court direct from the Collector were subject to the same Rules, Regulations, and Acts as were applicable to other persons holding similar tenures and interests under Collectors of the land revenue; but, when the farm was held from a manager, these Rules, Regulations, and Acts did not apply. Tenures held direct from the Collector in such estates could therefore be sold for arrears under section 11 of Act VII (B.C.) of 1868. A new Court of Wards' Act (IX (B.C.) of 1879), passed by the Bengal Legislative Council, has just received the assent of the

CHAPTER X.

JUDICIAL PROCEDURE.

SECTION I.—*General Rules applicable to Civil and Revenue Courts.*

ARTICLE **168.**

Act VIII (B.C.) of 1869, s. 24 : Act X of 1859, s. 29.

Suits may be brought by or against surburakars or tehsildars of estates held khas.

All suits, which under the provisions of this Digest may be brought by or against proprietors or other persons in the receipt of rent of land, may be brought by or against surburakars or tehsildars of estates held under khas management, whether such estates are the property of Government or of individuals.

ARTICLE **169.**

Act VIII (B.C.) of 1869, s. 32.

Naibs or Gomashtahs to be deemed in certain cases authorized agents in cases in Civil Courts.

Every Naib or Gomashtah thereto specially authorized by any writing under the hand of his employer shall, for the purposes of all suits instituted in any of the districts mentioned in Article 80 or 81 for any of the causes of action specified in Article 75, 76, 77, or 78, be deemed to be the recognized agent of such employer within the meaning of sections 36, 37, and 38 of the Code of Civil Procedure, though such employer may be within the jurisdiction of the Court in which such Naib or Gomashtah may appear or make any application. But any such suit must nevertheless be instituted and conducted in the name and on behalf of such employer.

11 W. R. 43.

Act X of 1859, s. 69.

Naibs, Gomashtahs, &c., in suits instituted or defended in Revenue Courts.

When suits under this Digest are instituted or defended in any of the districts specified in Article 82 by Naibs, Gomashtahs, or other persons employed in the collection of rent or management of land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Digest, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such Naibs, Gomashtahs, or other persons; and anything which by this Digest is required or permitted to be done by a party in

Governor-General. Section 63 of this new Act enacts that all arrears of rent due by farmers, under-tenants, and ryots in respect of property under the charge of the Court, whether such rents have become due before or after the Court has taken charge, shall be recoverable as *demands* under Bengal Act VII of 1868, or any similar Act for the time being in force; but this does not apply to enhanced rent, when the enhancement has not been agreed to, or confirmed by the Court. Under this section it would appear that the rent of tenures can be recovered by the certificate procedure only, and not by summary sale under section 11 of Act VII (B.C.) of 1868.

person, may be done by any such person as aforesaid. Processes served on any such person shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person, and all the provisions of this Digest relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

ARTICLE **170.**

Act VIII (B.C.) of 1869, s. 48: Act VI (B.C.) of 1862, s. 7.

Defendant may after action brought, pay into Court, without costs, money tendered before action.

The defendant in any suit instituted under any of the provisions of this Digest may, if he have duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as such defendant may consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment, and such sum shall be immediately paid out of Court to the plaintiff. If after such payment the plaintiff elects to proceed in the suit, and ultimately recovers no further sum than shall have been paid into Court, the plaintiff shall be charged with the whole costs of the suit incurred by the defendant; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with the whole costs of the suit.

Costs, if plaintiff goes on and recovers no more.

ARTICLE **171.**

Act VIII (B.C.) of 1869, s. 49: Act VI (B.C.) of 1862, s. 8.

If no previous tender made, defendant may pay into Court what he admits to be due with costs on that sum.

The defendant in any suit instituted under any of the provisions of this Digest may, without having made any tender before action brought, pay into Court such sum of money as he shall consider to be due to the plaintiff, together with the costs (to be fixed by the Court, if necessary, as of a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment, and such sum shall immediately be paid out of Court to the plaintiff. If after such payment the plaintiff elects to proceed in the suit, and ultimately recovers no further sum than shall have been paid into Court, he shall be charged with all costs incurred by the defendant subsequently to such payment; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree, but shall have credit thereout

Costs, if plaintiff goes on with the suit.

for the amount of costs paid into Court by him in the first instance.

ARTICLE **172.**

Act VIII (B.C.) of 1869, s. 57: Act VI (B.C.) of 1869, part of s. 17.

Rules for execution. Process not to issue simultaneously against both person and property.

Process of execution in any suit instituted under this Digest may be issued against either the person or the property of a judgment-debtor, but process shall not be issued simultaneously against both the person and property.

Act VIII (B.C.) of 1869, s. 65: Act X of 1859, s. 109.

Execution of money-decree against immovable property.

In the execution of any decree for the payment of any money under this Digest, not being money due as arrears of rent of a saleable tenure or under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or movable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immovable property belonging to such debtor.

SECTION II.—*The Civil Courts' Procedure.*

ARTICLE **173.**

Act VIII (B.C.) of 1869, s. 34.

Proceedings in Civil Courts to be regulated by Code of Civil Procedure.

Save as in this Digest is otherwise provided, suits of every description brought for any cause of action arising under this Digest, and all proceedings therein, shall, in the districts mentioned in Articles 80 and 81, be regulated by the Code of Civil Procedure, and by such further and other enactments of the Governor-General in Council in relation to Civil Procedure as from time to time may be in force; and all the provisions of the said Code and of such other enactments shall apply to such suits.

Act VIII (B.C.) of 1869, s. 42

Special Register of Rent-Suits.

All such suits shall be entered in a special Register to be kept by each Civil Court for that purpose.

ARTICLE **174.**

Act VIII (B.C.) of 1869, s. 35.

Place of suing how determined.

The cause of action in suits brought for the delivery of any pottah or kabuliyat; or for the cancelment of any lease; for the determination of rates of rent; for illegal exactions of rent, cess, or impost; for refusal of receipts for rent paid; for extortion of rent; for excessive demand of rent; for abatement of rent; for

arrears of rent, and for refusing to register transfers, successions, or divisions under Article 25, shall be deemed to have arisen within the jurisdiction of the Civil Court which would have had jurisdiction to entertain a suit for the recovery of the land or other immovable property in relation to which the cause of action arose, and shall be brought in such Civil Court, and in no other Court.

Provision when cause of action arises in different jurisdiction.

If the land, which is thus to determine the place in which the cause of action shall be deemed to have arisen, be situate within the jurisdiction of different Civil Courts, the provisions of section 19 of the Code of Civil Procedure shall apply to such suits, as if the same had been suits for the recovery of such land. Act VIII (B C.) of 1869, s. 36.

ARTICLE **175.**

Mesne profits may be claimed in suit in Civil Court for recovery of land.

It shall be lawful for any person entitled to recover the possession of land by a suit in the Civil Court under any of the provisions of this Digest, to include in his plaint a claim for the mesne profits of such land. Act VIII (B C) of 1869, s. 51.

ARTICLE **176.**

No warrant of arrest before judgment in suit for rent of transferable tenure.

No warrant of arrest before judgment shall be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure which may be liable to sale in execution of any decree which may be passed in the case. Act VIII (B.C.) of 1869, s. 50.

ARTICLE **177.**

Court to issue immediate execution in certain cases of ejectment, &c.

Whenever in any suit brought by any proprietor or other person in receipt of the rent of land, to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, the Civil Court shall pass a decree in favour of the plaintiff, no application in the form provided in section 235 of the Code of Civil Procedure shall be necessary, but such Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree: provided, however, Act VIII (B.C.) of 1869, s. 53.

that in cases, to which Article 93 is applicable, no such order shall be made until after the expiration of 15 days from the date of the decree.

ARTICLE **178.**

Act VIII (B.C.) of 1869, s. 54.

In such cases, execution not to be stayed pending appeal.

It shall not be lawful for the Court to entertain any application for stay of execution of the order mentioned in Article 177 pending any appeal, and no person who shall have been evicted under any such order shall be restored to possession so long as the decree under which such order was issued shall remain unreversed.

ARTICLE **179.**

Act VIII (B.C.) of 1869, s. 102: I. L. R. 3 Calc., 151.

No appeal from any decree of a District Judge or any Additional Judge for money below Rs. 100, unless right to enhance rent or title to land be determined by judgment.

Nothing in this Digest contained shall be deemed to alter the law as established by Act X of 1859 passed by the Governor-General in Council, so as to confer any power of appeal in any suit tried and decided by a District Judge or Additional[a] Judge originally or in appeal, if the amount sued for, or the value of the property claimed, does not exceed Rs. 100, in which suit a question of right to enhance or vary the rent of a ryot or tenant, or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has not been determined by the judgment.[b]

[a] 13 B. L. R., 376.

[b] 15 B. L. R. III.

Illustration.

21 W. R., 36: 23 W. R. 227.

A sues B for the rent of certain land. B pleads that the rent of the land is payable to C, and not to A. C is not made a party to the suit, which is decreed against B. No question relating to a title to land or to some interest in land as between parties having conflicting claims thereto is determined by the judgment in this suit.

ARTICLE **180.**

Act VIII (B.C.) of 1869, s. 103.

Review of judgment not admissible after 30 days.

No application for a review of any judgment or order passed in any suit brought under the provisions of this Digest shall be received by any Civil Court after the expiration of 30 days from the date of such order or judgment, but nothing in this article shall be deemed to apply to the High Court of Judicature at Fort William in Bengal.

ARTICLE **181.**

Small Cause Courts not to have jurisdiction.

Nothing in this Digest contained shall be deemed to confer upon any Court sitting as a Court of Small Causes cognizance of any suit brought under the provisions of this Digest, which it would not otherwise have had jurisdiction to entertain.

Act VIII (B.C.) of 1869, s. 104. Read clause 4 of section 6 of Act XI of 1865 with sections 15 and 52 of the same Act.

ARTICLE **182.**

Power to issue process free of charge.

If in any case a Civil Court is satisfied that a party is unable to pay the cost of any necessary process in any suit under this Digest, it may direct such process to be served free of charge.

Act VIII (B.C) of 1869, s. 105.

SECTION III.—*The Revenue Courts' Procedure.*[5]

ARTICLE **183.**

Suits brought in the Revenue Courts where to be instituted. Power of Collector to transfer suits.

Suits brought under any of the provisions of this Digest in any of the districts specified in Article 82 shall be instituted in the Revenue Office of the District, unless where a sub-division of a District has been placed under the jurisdiction of a Deputy Collector, or a Deputy Collector not in charge of a sub-division has been specially authorized by Government to receive such suits, in the former of which cases every such suit shall be instituted in the Revenue Office of the sub-division in which the cause of action arose, and in the latter of which cases every such suit shall be instituted in the Revenue Office of the Deputy Collector specially authorized as aforesaid, within the local limits of whose jurisdiction the cause of action arose.

Act VI (B.C.) of 1862, s. 20.

13 B. L. R. 436 (Full Bench).

If any suit, which under this rule should be instituted in the Revenue Office of a Deputy Collector, be instituted in the Revenue Office of the District, and be referred by the Collector to a Deputy Collector other than the Deputy Collector in whose office such suit should have been instituted as aforesaid, and if a decree be passed in such suit by such Deputy Collector to whom such suit has been so referred, such decree shall not be absolutely void for want of jurisdiction, but it may be avoided at the instance of the defendant.

13 B. L. R. 436 (Full Bench).

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[5] *The Revenue Courts' Procedure* is of course the procedure provided by Act X of 1859, which was taken principally from the Small Cause Courts' Bill, which afterwards became Act XLII of 1860—see *Proceedings of Legislative Council of India*, Vol. III, 1857, pp. 440-441. The late Mr. Justice Elphinstone Jackson considered these provisions admirable—see his minute on Act X, dated 1864.

A Collector may withdraw any such suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector.

ARTICLE **184.**

Act VI (B.C.) of 1862, s. 20.

Suit for rent of land situate within more than one local jurisdiction to be instituted in jurisdiction within which greater part of lands situate.

If lands comprised in any talook, farm, or other tenure, or lands held under one lease or engagement, or at one entire rent are situated in more than one district or sub-division, or within the local limits of the jurisdiction of more than one Deputy Collector not in charge of a sub-division, but who has been specially authorized by Government to receive such suits as aforesaid, the cause of action for arrears of rent of such lands shall be deemed to have arisen within the district, sub-division, or local limits within which the greater part of such lands is situate. If any question shall arise as to whether the greater part of such lands is situate within any such district, sub-division, or local limits, the Board of Revenue in the case of districts, and the Collector in the case of sub-divisions or local limits, shall decide such question, and such decision shall be conclusive upon the point of jurisdiction.

ARTICLE **185.**

Act X of 1859, s. 34.

Mode of instituting suits in Revenue Courts. Form of plaint or statement of claim.

Suits in the districts specified in Article 82 shall be instituted by presenting to the Collector a plaint or statement of claim which shall contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant, so far as they can be ascertained; the substance of the claim, and the date of the cause of action.

Act X of 1859, s. 41.

Form of plaint in suits for ejectment of ryot, &c., or for recovery of occupancy or possession of land, &c.

If the suit be for the ejectment of a ryot, farmer, or tenant, from any land, farm, or tenure, or for the recovery of the occupancy or possession of any land, farm, or tenure, the statement shall describe as (circumstances may require) the extent, situation, and designation of the same; and, if necessary for the identification of the land, shall set forth the boundaries of such land.

ARTICLE **186.**

Act X of 1859, s. 35.

Statement of claim by whom to be presented.

The statement of claim shall be presented by the plaintiff, or by an authorized agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge.

ARTICLE **187.**

Act X of 1859, s. 36.

Verification of statement of claim.

The statement of claim shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

I, A. B. do declare that the above statement is true to the best of my knowledge and belief.

Punishment for false verification.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

ARTICLE **188.**

Act X of 1859, s. 38.

Plaintiff to produce his documentary evidence with statement of claim.

If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim. Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

ARTICLE **189.**

Act X of 1859, s. 39.

Plaintiff how to proceed if he require production of document from defendant.

If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver to the Collector a description of the document, in order that the defendant may be required to produce the same.

ARTICLE **190.**

Act X of 1859, s. 42.

Statement, if not correct, may be returned or allowed to be amended.

If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or at his discretion allow it to be amended.

ARTICLE **191.**

Act X of 1859, s. 43.

Issue of summons; personal attendance of defendant may be required.

If the statement of claim be in proper form, the Collector, except as otherwise hereinafter especially provided, shall direct the issue of a summons to the defendant, and if the plaintiff require the personal attendance of the

defendant and satisfy the Collector that such personal attendance is necessary, or the Collector of his own accord require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons: otherwise the summons shall order the defendant to appear personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

ARTICLE **192.**

Act X of 1859, s. 44.

Day to be specified in summons how fixed. Defendant to be ordered to produce necessary documents, and to bring witnesses willing to attend without process.

The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence. It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process; and shall be in the form shown in Schedule G annexed to this Digest, or to the like effect.

ARTICLE **193.**

Act X of 1859, s. 45.

Summons how to be served on defendant.

The summons shall be served by delivering a copy of the summons to the defendant personally, when practicable; or, if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's office.

ARTICLE **194.**

Act X of 1859, s. 46.

Endorsement by Nazir, if summons has been personally served or not.

If the summons be served personally, the Nazir shall endorse on the summons the fact of such service. If personal service be not effected, the Nazir shall endorse on the summons the reason of not serving it personally, and how it has been served.

ARTICLE **195.**

Act X of 1859, s. 47.

Execution of process in another district.

If the usual place of abode of the defendant be in another district, the summons, together with the cost of the service thereof, shall be sent by the public post to the Collector of such district, who shall

issue the summons, and return the same after service with the prescribed endorsement, to the officer by whom it was transmitted to him.

ARTICLE **196.**

Act X of 1859, s. 48.

Cost of serving summons or warrant to be deposited in Court.

The amount of the cost of serving the summons, or if a warrant be issued as provided in Article 197 of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaint or statement of claim is presented to the Collector. If the said amount be not so deposited, except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in Article 252, the case shall not be brought on the file of suits: but in such case the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

ARTICLE **197.**

Act X of 1859, part of s. 49.

Warrant of arrest in what cases to be issued.

If in any suit against a tenant for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant. When such application is presented, the Collector shall examine the plaintiff or his agent on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses, and inspect the documents adduced by him in support of his claim, and if there be *primâ facie* grounds for believing the claim to be well-founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant. But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure, which is liable to sale in execution of any decree which may be passed in the case.

ARTICLE **198.**

Act X of 1859, part of s. 9.

Time for return of warrant. Notice to be served upon defendant when arrested.

The Collector shall fix a reasonable time for the return of the warrant which shall be in the form shown in Schedule H annexed to this Digest, or to the like effect, and the officer entrusted with the service of the warrant

shall at the time of arresting the defendant deliver to him a notice addressed to the defendant (which shall be in the form shown in Schedule I annexed to this Digest, or to the like effect) containing the particulars of the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence.

Act X of 1859, s. 50.

Procedure upon arrest.

If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector, and the Collector shall commit him to custody unless he deposit in Court such sum as may be specified in the notice.

ARTICLE 199.

Act X of 1859, s. 51.

Procedure when defendant is brought before the Collector under warrant.

When a defendant is brought before the Collector under warrant, the Collector shall with all convenient speed proceed to try the case in the manner hereinafter provided; and if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is depending or until execution of the final decree which may be passed thereon, and may commit the defendant to the Civil Jail to be there detained until he shall furnish such security or deposit such sum as the Collector shall order. The security bond shall be in the form shown in Schedule J annexed to this Digest, or to the like effect.

Form of security bond.

ARTICLE 200.

Act X of 1859, s. 52.

Procedure if warrant of arrest cannot be served upon the defendant.

If the defendant cannot be arrested under the warrant, the Collector on the application of the plaintiff shall either postpone the case for such period as he may think proper in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation to be affixed in his own office and at the residence of the defendant, fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in Article 199.

ARTICLE **201.**

Act X of 1859, s. 53.

Compensation for arrest obtained without reasonable cause.

If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may in his decree award to the defendant such sum not exceeding one hundred rupees as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest or of his detention in jail during the pendency of the suit.

ARTICLE **202.**

Act VI (B.C.) of 1862, s 16.

Attachment before judgment. Provisions of Code of Civil Procedure applicable.

The provisions relating to attachment before judgment contained in sections 483 to 491 inclusive of "The Code of Civil Procedure" are applicable to suits brought in the Revenue Courts in any of the districts specified in Article 82 upon any cause of action arising under the provisions of this Digest.

ARTICLE **203.**

Act X of 1859, s. 54.

Consequence of neither party appearing on the day of trial.

If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit unless precluded by the rules for the limitation of actions.

ARTICLE **204.**

Act X of 1859, s. 55.

If defendant only appear and dispute the demand, Collector to pass judgment by default; but if defendant admit the claim, Collector to decree upon such admission.

Proviso.

If on any such day the defendant only appear, the Collector shall pass judgment against the plaintiff by default unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs: provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

ARTICLE **205.**

Act X of 1859, s. 56.

If plaintiff only appear, Collector may proceed *ex parte*.

If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

ARTICLE **206.**

Act X of 1859, s. 57.

If defendant appear on day to which hearing postponed, Collector may allow him to be heard in answer to the suit.

If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under Article 205, the Collector may, upon such conditions (if any) as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

ARTICLE **207.**

Act X of 1859, s. 58.

Revival, reversal, and alteration of decrees made *ex parte* or on default.

No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all such cases if the party against whom judgment has been given shall appear either in person or by agent, if a plaintiff, within fifteen days from the date of the Collector's order, and if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shall show good and sufficient cause for his previous non-appearance and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree according to the justice of the case. But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Act VI (B.C.) of 1862, s. 13.

Appeal to lie when application to set aside *ex parte* decree rejected.

In all cases in which the Collector shall pass an order under this Article setting aside the judgment, such order shall be final. In all appealable cases in which the Collector shall reject the application, an appeal shall lie from the

order of rejection to the tribunal to which the final decision in the suit would be appealable. Such appeal shall be preferred within the time allowed for appealing from such final decision, and shall be written on stamp paper of the value prescribed for petitions to the Court to which the appeal lies, where a stamp is required for petitions.

ARTICLE **208.**

The parties on appearing to be examined by the Collector, and may cross-examine each other.

When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other. If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally. At the time of examination the defendant, if he think fit, may file a written statement of his defence. Act X of 1859, s. 59.

Personal attendance of plaintiff or defendant not required in certain cases.

A plaintiff or defendant shall not be required to attend in person if of the female sex and of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public. Act X of 1859, s. 70.

Employment of authorized agents or mookhtars.

Any party to a suit may employ an authorized agent or mookhtar to conduct the case on his behalf, but the appointment of such agent or mookhtar shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court. Act X of 1859, s. 71.

ARTICLE **209.**

Examination of parties, &c., how conducted and recorded.

The examination of the parties or their agents or such other persons as aforesaid shall be upon oath or affirmation or otherwise according to the law for the time being in force relative to the examination of witnesses. The substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record. Act X of 1859, s. 60.

ARTICLE **210.**

Act X of 1859, s. 62.

Documentary evidence when to be produced by defendant.

If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit; and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

ARTICLE **211.**

Act X of 1859, s. 61.

Witness if present to be examined.

If either of the parties shall bring forward a witness on the day aforesaid, the Collector may take the evidence of such witness.

Act X of 1859, s. 63.

After examination of parties and witnesses present, Collector may make his decree if no further evidence required.

If after the examination required by Article 209, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

ARTICLE **212.**

Act X of 1859, s. 64.

Postponement for appearance of party whose agent is unable to answer material question.

If on such examination as aforesaid the agent of either party be unable to answer any material question relating to the case, which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default or make such other order as he may deem proper under the circumstances of the case.

ARTICLE **213.**

Act X of 1859, s. 65.

Collector when to record issue and fix day for hearing further evidence.

If, on such examination as aforesaid, it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the

trial of the suit; and the trial shall take place on that day unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

ARTICLE **214.**

Parties to produce their witnesses on day of trial; or Collector on application to issue summons for their attendance.

The parties shall bring forward their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons requiring such witness to attend. Act X of 1859, s. 66.

ARTICLE **215.**

Collector may grant time or adjourn hearing.

The Collector may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to the production of further proof, or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit. Act X of 1859, s. 72.

ARTICLE **216.**

Rules regarding attendance, examination, &c., of witnesses.

The provisions of the Regulations and Acts and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Digest, apply to and be of equal force and effect in suits instituted and tried under *The Revenue Courts' Procedure.* Act X of 1859, s. 67.

ARTICLE **217.**

Course to be pursued if parties do not appear on day fixed for trial of issue.

If on the day fixed for the trial of any issue neither of the parties appear, the case shall be struck off under the conditions provided in Article 203. If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court. Act X of 1859, s. 68.

ARTICLE **218.**

Act X of 1859, s. 73.

Collector may cause local inquiry to be made: procedure on such inquiry.

The Collector may at any stage of a case cause a local inquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local inquiry in person. The provisions of the law for the time being in force relative to local inquiries by Ameens or Commissioners under orders of the Civil Courts shall apply to any local inquiry made by any officer under this Article, and, so far as they are applicable, to inquiries made by the Collector in person. In the latter case the Collector, after completing the inquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

ARTICLE **219.**

Act X of 1859, s. 75.

No interest on money paid into Court.

No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

ARTICLE **220.**

Act X of 1859, s. 77.

Third party claiming right to receive rent to be made a party to the suit, and fact of receipt of rent to be inquired into.

When in any suit between a landlord and tenant under *The Revenue Courts' Procedure* the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be inquired into, and the suit shall be decided according to the result of such inquiry: provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of such decision.

Proviso.

ARTICLE **221.**

Judgment how to be written and pronounced and what to contain: when to be dated and signed.

The judgment of the Collector shall be pronounced in open Court: it shall be written in the vernacular language of the Collector and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced. If the vernacular language of the Collector be not English, and he be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment therein, the judgment may be written in English.

Act VI (B.C.) of 1862, s. 15.

ARTICLE **222.**

Fees of agents and mookhtars may be allowed as costs.

It shall be competent to the Collector in awarding costs to either party to allow, on account of the fees of any agent or mookhtar employed by such party, a sum not exceeding the rate of fee chargeable under the provisions of section 7 of Act I[6] of 1846 for pleaders in the Civil Courts.

Act VI (B.C.) of 1862, s. 14.

ARTICLE **223.**

Execution may be issued on oral application at time of pronouncing judgment, or afterwards on application in writing.

Execution may be issued on the oral application of the judgment-creditor, his agent or mookhtar, made at the time the judgment is pronounced, or thereafter upon the written application of the judgment-creditor, his agent or mookhtar, presented to the Court by which the judgment was given. Process of execution against the person or movable property of a debtor shall be in the form shown in Schedule K, or in the form shown in Schedule L annexed to this Digest, or in a form as nearly resembling those forms as the circumstances of the case may admit.

Act VI (B.C.) of 1862, part of s. 17.

ARTICLE **224.**

Warrant of execution how long to continue in force.

Every warrant of execution shall bear date on the day on which it is signed by the Collector, and shall continue in force for such period as the Collector may direct, not being more than sixty days calculated from such date.

Act X of 1859, s. 88.

[6] Act I of 1846 was repealed by Act XX of 1865. The repeal of a statute does not repeal a portion of it incorporated by reference in another statute not itself repealed, so far as the result of the incorporation is concerned.

Act X of 1859, s. 89.

Second and successive warrants.

Second and successive warrants of execution may be issued by order of the Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

ARTICLE **225.**

Act X of 1859, s. 90.

After one year execution not to issue without notice.

Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

Act X of 1859, s 91.

Execution not to issue against heir or representative of a deceased party without notice.

Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

ARTICLE **226.**

Act X of 1859, s. 82.

Mode of executing decree for ejectment or reinstatement of ryot.

In case of obstruction Magistrate to give effect to execution.

If the decree be for the ejectment of any ryot from land occupied by him, or for the reinstatement of any ryot in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy. If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate on the application of the Collector shall give effect to the same.

ARTICLE **227.**

Act X of 1859, s. 83.

Mode of executing decree for cancelment of lease or for ejectment or re-instatement of farmer or tenant.

If the decree be for the cancelment of any lease, or the ejectment of any farmer or other person (not being an actual cultivator) or for the reinstatement of any farmer or other such person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

ARTICLE **228.**

If the decree be for arrears of rent, or for money, papers, or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of any security bond given under Article 199, the Collector may order that he be detained in or committed to the Civil Jail, unless he immediately pay into court the amount of the decree with costs, or otherwise comply with the terms of the decree. Act X of 1859, s. 84.

In what case judgment-debtor may be detained or imprisoned without issue of process of execution.

ARTICLE **229.**

If the judgment-debtor have given security for his appearance and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety. If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety. Act X of 1859, s. 85.

Execution may be had against surety who fails to deliver judgment-debtor into custody.

ARTICLE **230.**

If a warrant issue for taking in execution the body of any person, the officer charged with the execution of the warrant shall bring him with all convenient speed before the Collector. If such person shall not then deposit in Court the full amount specified in the warrant, or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor or satisfy the Collector that he has no present means of paying the debt, the Collector shall send him to the Civil Jail there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall in the meantime pay the full amount for the payment of which he is liable under the decree. Act X of 1859, s. 93.

Warrant against the person how executed.

The time for which a debtor may be confined in execution of a decree under this Article shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed fifty rupees, or six

Limit of imprisonment in case of money decrees.

calendar months when such amount does not exceed five hundred rupees, or two years in any other case.

In case of non-delivery of accounts.

If the decree against any person arrested under a warrant be for the delivery of papers or accounts and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the Civil Jail, there to remain for such time not exceeding six calendar months as the Collector shall direct, unless he shall in the meantime deliver the papers or accounts according to the terms of the decree.

ARTICLE **231.**

Act X of 1859, s 94.

Any person once discharged from jail shall not be imprisoned a second time under the same judgment. If the amount due under the decree do not exceed one hundred rupees, the Collector may declare such discharged person absolved from further liability under that decree. In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

No person to be imprisoned a second time under same judgment.

ARTICLE **232.**

Act X of 1859, s. 95.

Any person applying for a warrant of arrest under Article 197, or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas per diem, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas per diem.

One month's diet-money to be deposited at the time of issue of warrant.

Act X of 1859, s. 96.

Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged.

Monthly payment of diet-money in advance during imprisonment.

ARTICLE **233.**

Act X of 1859, s. 97.

All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same.

Diet-money to be costs in the suit.

ARTICLE **234.**

Application for execution against movable property how made.

Any movable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor, but if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects to the amount of the judgment and costs. In either case the property to be seized shall be pointed out to the officer entrusted with the execution of the process by the creditor or his agent. Act X of 1859, s. 87.

ARTICLE **235.**

List of property to be prepared and proclamation of sale to be published, &c.

In executing a writ of execution against the movable property of a debtor, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held together with a copy of the said list at the intended place of sale and at the residence of the debtor. A copy of the said proclamation and list shall be transmitted to the Collector and shall be affixed in his office. Act X of 1859, s. 98.

ARTICLE **236.**

Custody and sale of movable property taken in execution.

No sale of any movable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken. Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ. The provisions of Articles 121 to 125, so far as the same are applicable, shall be applied to sales under this Article. Act X of 1859, s. 99.

ARTICLE **237.**

Collector may stay sale of movable property, if third party claim an interest therein.

If before the day fixed for the sale a third party appear before the Collector and claim a right or interest in any of the movable property taken in execution, the Collector shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses, Act X of 1859, s. 100.

and if he see sufficient reason for so doing may stay the sale of such property.

ARTICLE **238.**

Act X of 1859, s. 101.

Collector to adjudicate upon such claim.

The Collector shall adjudicate upon such claim and make such order between the claimant and the plaintiff and defendant in the original suit as shall seem fit. In trying such claim the Collector shall be guided by *The Revenue Courts' Procedure*, so far as it may be applicable.

ARTICLE **239.**

Act X of 1859, s. 102.

Claimant failing to establish his rights liable to pay compensation to judgment-creditor.

If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant as part of the costs such sum as he may consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

ARTICLE **240.**

Act X of 1859, s. 103.

No appeal from order of Collector under Article 238 or 239: but civil suit to lie.

No appeal shall lie from any order passed by the Collector under Article 238 or 239: but the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order. If the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

ARTICLE **241.**

Act X of 1859, s. 104.

Sale of movable property not vitiated by irregularity in publishing or conducting it: but suit for damages may be brought within one year.

No irregularity in publishing or conducting a sale of movable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court: provided such action be brought within one year from the date of sale.

ARTICLE **242.**

Tenure or under-tenure, notified for sale in execution of decree for rent thereof, to be sold in open Court to highest bidder.

When an order has been made under the provisions of Article 151 for the sale of a tenure or under-tenure in execution of a decree for arrears of rent due in respect thereof, and when notice of sale has been published as provided in Article 152, such tenure or under-tenure shall be sold in open Court to the highest bidder upon the day appointed in such notice for the sale. Act VIII (B.C.) of 1865, s. 7.

ARTICLE **243.**

Purchaser to deposit 25 per cent.: re-sale on default.

The person who shall be declared to be the purchaser shall be required to deposit immediately, in cash or Government currency notes, 25 per cent. of the amount of his bid; and in default of such deposit, the tenure or under-tenure shall be put up again and sold forthwith, or on the next ensuing office day. Act VIII (B.C.) of 1865, s. 8.

ARTICLE **244.**

Deposit to be forfeited if balance of purchase-money be not paid up in time: liability for loss on re-sale.

The full amount of the purchase-money shall be made good by the purchaser before sunset of the eighth day from that on which the sale of the tenure or under-tenure took place, reckoning that day as one of the eight; or, if the eighth day be a Sunday or other close holiday, then on the first office day after the eighth day: and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to the Government, and the tenure or under-tenure shall be re-sold, and the defaulting purchaser shall forfeit all claims thereto or to any part of the sum for which the said tenure or under-tenure may be subsequently sold. If the proceeds of the sale which may be eventually completed be less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent. Act VIII (B.C.) of 1865, s. 9.

Provisions as to sales to apply to all re-sales

The provisions of this Article and of Articles 242 and 243 with regard to sales shall also be applicable to all re-sales, which may be rendered necessary by the default of any purchaser. Act VIII (B.C.) of 1865, s. 10.

ARTICLE **245.**

Act VIII (B.C.) of 1865, s. 11.

Certificate and possession to be given to purchaser on payment by him of the whole purchase-money.

When the purchase-money shall have been paid in full, the officer holding the sale shall give the purchaser a certificate in the form prescribed in the form shown in Schedule M annexed to this Digest, and shall further, on the purchaser making application and depositing the requisite costs, depute an officer or ameen to put him in possession of the tenure or under-tenure in the customary manner, and to publish the fact of the purchase to the cultivators of the lands comprised therein.

ARTICLE **246.**

Act VIII (B.C.) of 1865, s. 12.

Proceeds of sale how to be dealt with.

From the proceeds of the sale of the tenure or under-tenure, the officer holding such sale shall repay to the judgment-creditor the necessary expenses incurred by him in procuring it; and, after satisfying the decree in execution of which the sale was made, shall hold the residue (if any) in deposit on account of the defaulting holder of the tenure or under-tenure.

ARTICLE **247.**

Act VIII (B.C.) of 1865, s. 13.

Appeal to what authority. Grounds of reversal.

An appeal shall lie to the Collector from any proceedings of a Deputy or Assistant Collector, if made within fifteen days; and to the Commissioner from any original proceedings of a Collector under Articles 242 to 246 inclusive, if made within thirty days from the date of the sale: but no such proceedings shall be reversed or modified in appeal, except upon the ground of irrelevancy of the law, or of such an irregularity in procedure as, in the opinion of the Appellate Authority, has caused injury to the interests of one of the parties to the suit in which the decree was passed.

ARTICLE **248.**

Act VIII (B.C.) of 1865, s. 14.

Power of revision of order passed on appeal.

No appeal as of right shall lie from any order passed in appeal under Article 247; but a Commissioner, in any case in which an appeal has been heard by a Collector, and the Board of Revenue, in any case in which an appeal has been heard by the Commissioner, may call for the record at any time within three months from the date of the order passed in appeal, and pass thereon such orders as they may think proper.

ARTICLE **249.**

If any sale of a tenure or under-tenure shall be set aside under Article 247 or 248, the purchaser shall be entitled to receive back the purchase-money with or without interest, and in such manner as the Appellate or Revising Authority may in each instance direct. Any order for the recovery of the purchase-money or interest, passed by such Appellate or Revising Authority as aforesaid, may be enforced by the process in force under decrees for the recovery of arrears of rent.[7]

Act VIII (B.C.) of 1865, s. 15.

If sale set aside, purchaser to recover purchase-money in such manner as Appellate or Revising Authority may direct.

ARTICLE **250.**

If the immovable property against which execution is applied for be a house or other building, process shall be issued in the same manner as for the attachment and sale of movable property, and the provisions of Articles 235 and 236 shall be applicable to the execution of such process. If the property be a saleable tenure or under-tenure, it shall be sold under the provisions of the law[8] for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof. If the property be an estate or a share of an estate, it shall be sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land revenue.

Act X of 1859, s. 110.

Manner of execution, if immovable property be a house or other building.

If it be a saleable tenure or under-tenure.

If it be an estate or a share of an estate.

ARTICLE **251.**

If, before the day fixed for the sale of any immovable property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection in the manner

Act X of 1859, s. 111.

Procedure if objection offered on ground that property does not belong to judgment-debtor.

[7] It may be observed that Act VIII (B.C.) of 1869 contains no provisions corresponding to those of Articles 242—249 (sections 7—15 of Act VIII (B.C.) of 1865): and in respect of the matter of these provisions the Civil Courts must therefore govern themselves by the Code of Civil Procedure.

[8] It would have been satisfactory if this law had been incorporated by special reference.

prescribed in Article 237 for the examination of third parties, and if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to enquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in Article 153.

ARTICLE **252.**

Act X of 1859, s. 146.

Process by whom to be executed and at whose cost: grant of process gratis.

Every process issued by a Collector under this Digest shall be under the seal and signature of the Collector, and shall be served or executed by the Nazir or by such other officer as the Collector may direct at the cost of the party at whose instance it issued. The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness shall be deposited in Court before the process is issued: provided that if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

ARTICLE **253.**

Act X of 1859, s. 148.

Collector may hold Court in any part of his jurisdiction; parties to have due notice.

It shall be competent to the Collector to hold a Court for hearing and determining suits under this Digest in any place within the limits of his district or local jurisdiction: provided that every hearing and decision shall be in open Court, and that the parties to the suits, or their authorized agents, shall have had due notice to attend at such place.

ARTICLE **254.**

Act X of 1859, s. 151.

Collectors and Deputy Collectors to be subject to control of Commissioners and Board of Revenue.

In the performance of their duties under this Digest the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Board of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate. All orders passed by a Collector under this Digest, not being judgments in suits, or orders passed in the course of suits and relating to the trial thereof, or orders passed after decree and relating to the execution thereof, shall be appealable to the Commissioner; and all such orders passed by a Deputy Collector

Appeal from orders of Collectors and Deputy Collectors, not being judgments in suits.

shall be appealable to the Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Digest.

ARTICLE **255.**

Act X of 1859, s. 152.

Time for presenting appeals from orders.

Every appeal against the order of a Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector shall be presented to the Collector within fifteen days from the date of the order.

Revision of orders passed on appeal.

Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case and pass such orders thereon as they may think proper.

ARTICLE **256.**

Act X of 1859, s. 153.

No appeal from decree of Collector for money below Rs. 100, unless decision involve some question of right to enhance rents or of title to land.

In suits under clauses 2, 4, 7 and 8 of Article 82, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Collector shall be final and not open to revision or appeal except as hereinafter provided; unless in any such suit a question of right to enhance or otherwise vary the rent of a ryot or other tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in Articles 263 and 264.

ARTICLE **257.**

Act X of 1859, s. 154.

In non-appealable cases Collector may grant re-hearing upon discovery of new evidence, &c.

In suits in which the judgment of the Collector is final as provided in Article 256, the Collector may upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of or could not produce at the time of trial.

ARTICLE **258.**

Act X of 1859, s. 155.

Appeal from Deputy Collector to Collector in what cases.

When any such suit as aforesaid, in which if tried and decided by a Collector the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

Act IV (B.C.) of 1867, s. 5.

Lieutenant-Governor may appoint fully qualified Revenue Officer to exercise appellate jurisdiction of Collector.

It shall be competent to the Lieutenant-Governor of Bengal to appoint any fully qualified Revenue Officer to exercise the powers of the Collector of a District for the purpose of enabling him to hear and determine appeals from the decisions of Deputy Collectors, and such Officer so specially appointed shall have and exercise all such and the same powers in regard to the hearing of such appeals as the Collector of the district within which such person shall be so appointed might have and exercise.

ARTICLE **259.**

Act X of 1859, s. 156.

Petition of appeal to be presented to Collector within 15 days.

The petition of appeal shall be written and shall be presented to the Collector within fifteen days from the date of the decree: provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

ARTICLE **260.**

Act X of 1859, s. 157.

Collector how to proceed to hearing of appeal.

The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. If, on the day fixed for hearing the appeal or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default. If the appellant shall appear, and the respondent shall not appear in person or by an agent, the appeal shall be heard *ex parte*.

ARTICLE **261.**

Act X of 1859, s. 158.

Re-admission of appeal dismissed for default.

If an appeal be dismissed for default of prosecution, the appellant may within fifteen days from the date of the dismissal apply to the Collector for the re-admission of the appeal, and if it shall be proved to the satisfaction of the Collector that the appel-

lant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

ARTICLE **262.**

Judgment in appeal how to be pronounced, &c.

After hearing the appeal, the Collector shall give judgment in the manner prescribed in Article 221 for giving judgment in original suits, and the judgment of the Collector shall be final. Act X of 1859, s. 159.

ARTICLE **263.**

In what suits appeal to lie to District Judge:

or to High Court.

In all suits other than those in which when tried and decided by a Collector the judgment of the Collector is declared to be final, or when tried and decided by a Deputy Collector an appeal is allowed to the Collector, and in the cases provided for in Articles 94 and 97, an appeal from the judgment of the Collector or Deputy Collector shall lie to the District Judge, unless the amount or value in dispute exceed five thousand rupees, in which case the appeal shall lie to the High Court. Act X of 1859, s. 160: Act VI (B.C.) of 1862, s. 10 (last sentence).

ARTICLE **264.**

Rules regarding presentation and hearing of appeals.

The petition of appeal shall be written; and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, are applicable to appeals to the District Judge or to the High Court under this Digest. Act X of 1859, s. 161.

ARTICLE **265.**

Provisions of Articles 183 to 264 called "The Revenue Courts' Procedure." Meaning of terms, "Civil Jail"

and "Nazir."

The provisions of Articles 183 to 264 shall be called "The Revenue Courts' Procedure," and the words "civil jail" as used in these provisions shall include the Civil Jail of the district and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Digest, and the word "nazir" shall include any officer of a Court authorized to serve or execute its process. Act X of 1859, s. 165.

SCHEDULE A.—(*See Article* 100.)

I, A. B., of, &c, do solemnly declare that I did personally (or by my agent, C. D.), on the day of tender payment to E. F. at his mâl cutcherry (or at) the place where the rent of the lands at held or cultivated by me under or from the said E. F. are usually payable, of the sum of Rs. as and for the whole amount due from me in respect of the rent of the said lands from the month of to the month of both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered (or to give me a receipt in full forthwith for the same); and I do declare that, to the best of my belief, the sum of Rs. so tendered, and which I now desire to pay into Court, is the full amount which I owe the said E. F. on account of the rent of the said lands from the month of to the month of both inclusive, and that I owe the said E. F. no further sum an account of the rent of the said lands.

SCHEDULE B.—(*See Article* 100.)

Court of

Dated the day of 18

To E. F. of, &c.

WITH reference to the within declaration, you are hereby informed that the sum of Rs. therein mentioned is now in deposit in this Court, and that the above sum will be paid to you or to your duly authorized agent on application; and Take Notice that if you have any further claim or demand whatsoever to make against the said A. B. in respect of the rent of the said lands, you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

[Copy of declaration in Schedule A. to be annexed.]

SCHEDULE C.—(*See Article* 116.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Court of

A. B., Distrainer.

(*Name, description, and address of the owner of the property.*)

WHEREAS the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B. or to institute a suit in the Court of[2] to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 18 .

SCHEDULE D.—(*See Article* 160.)

Certificate of Arrear of Demand, filed in the office of the Collector of District

Name of Debtor.	Address.	Nature of demand.	Amount of demand.	No. of certificate.
C. D.				

I certify that the abovementioned sum of Rs. is due to Government from the above named C. D.

Dated this day of 18 .

A. B.,
Collector of

[2] In the districts specified in Article 82 "before the Collector."

SCHEDULE E.—(*See Article* 162.)

To

C. D. OF

TAKE notice that a certificate under section (15, or 18, as the case may be) of Act VII of 1868 of the Lieutenant-Governor of Bengal in Council of (Arrears of Revenue or Demand, as the case may be) No. , for the sum of Rs. due from you on account of , has been this day filed by me in my office, and that I shall forthwith proceed to levy the amount according to law.

This day of 18 .

A. B.,
Collector of

SCHEDULE F.—(*See Article* 163.)

To

THE COLLECTOR OF

The Petition of E. F., of

SHEWETH,

THAT a certificate under Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, No. , for the sum of Rs. , has been filed in your office on the day of 18 .

That your petitioner is aggrieved by the said certificate.

That your petitioner believes that such certificate is erroneous upon the grounds following, that is to say—

That the said grounds are, to the best of your petitioner's belief, true in fact.

Your petitioner therefore prays that the said certificate may be set aside (or modified, or varied).

SCHEDULE G.—(*See Article* 192.)

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

[*Name, description, and address of plaintiff.*]

C. D., Defendant.

[*Name description and address of defendant.*]

WHEREAS the said A. B. has brought a claim against you in the Court for [*here specify particulars of claim as given in the statement*], you are hereby required to appear in person in this Court on the day of [*if not specially required to appear in person, say, "in person or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"*] to answer the abovenamed plaintiff, and you will bring with you (or send by your agent) [*here mention any document, the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

SCHEDULE H.—(*See Article* 198.)

FORM OF WARRANT OF ARREST.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of—

WHEREAS the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 18

SCHEDULE I.—(*See Article* 198.)

FORM OF NOTICE TO ACCOMPANY WARRANT IN SCHEDULE H.

In the Court of

A. B., Plaintiff.

[*Name, description, and address of plaintiff.*]

C. D., Defendant.

[*Name, description, and address of defendant.*]

WHEREAS the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*), and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

SCHEDULE J.—(*See Article* 199.)

FORM OF SECURITY BOND FOR APPEARANCE OF DEFENDANT.

WHEREAS A. B., plaintiff, has instituted a suit in the Court of the Collector of against C. D., defendant, and the said C. D. has been required to give security for his appearance at any time when called on while the suit is depending and until execution of the decree, I, E. F., hereby declare myself surety for the said C. D.'s appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. [*If the suit be for the delivery of papers or accounts specify some sum to be fixed by the Collector*].

SCHEDULE K.—(*See Article* 223.)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of—

WHEREAS the said C. D. was directed by a decree of this Court, under date the day of 18 , to

pay to A. B. the sum of and for costs of suit amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C. D., and to bring him with all convenient speed before this Court to be dealt with according to law.

SCHEDULE L.—(*See Article* 223.)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.
C. D., Defendant.

To the Nazir of the Court of the Collector of—

WHEREAS C. D. was directed by a decree of this Court under date the day of 18 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such movable property of the said C. D. as is described in the list annexed, and [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D., on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

SCHEDULE M.—(*See Article* 245.)

CERTIFICATE OF PURCHASE.

I CERTIFY that has purchased the tenure (or under-tenure) [*as specified in the notice of sale*] and that his purchase took effect on the day of (*being the day after that fixed for the last day of payment*).

C. D.,
Collector.

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APPENDIX I.

NOTE

ON

THE TRANSFERABILITY OF RYOTS' HOLDINGS.

I DO not propose to consider the state of things before the Permanent Settlement. It is difficult to define rights which had a mere shadowy existence in a state of society where there was no systematic legislation, no regular courts of justice, and which therefore were not capable of enforcement by legal sanction. Custom is the only law possible to such a society, and uniformity is necessary to make binding custom. In the disturbed times which preceded our rule the only thing uniform was oppression; and even of this the manner and method were not uniform, but varied with personal rapacity and with the power of individuals to resist or evade or endure it. "The foundation of a custom," says Sir Henry Maine, "is habitual practice, a series of facts, a succession of instances from whose constant recurrence a rule is inferred." It would seem tolerably clear that the dealings of the Mahomedan Government with Indian ryots were regulated by its own will and pleasure, and not by any tenderness towards, or regard for, their privileges. It is true that there were certain orders by which these dealings were regulated; but those orders were framed, not for the protection of the ryots' privileges, but as a check on the servants of Government. Bengal and Behar were at some distance from the seat of Government, and those orders were less implicitly obeyed in these provinces than in provinces nearer

Unnecessary to go back beyond the Permanent Settlement.

the imperial city. What obedience was rendered, was short-lived, for distant Governors soon set up their own authority and regulated affairs each according to his inclination or his power. It is difficult to say that in such a state of things there was any habitual practice, any regular series of facts, any succession of uniform instances from whose constant recurrence a rule creating a custom can be inferred.

Immovable property in India not formerly alienable.

Before the period of British Government alienability was not an ordinary incident of immovable property in India: it has not been an ordinary incident of such property at an early period in any country. When zemindars were created proprietors of the lands which were termed their "estates," the Government expressly declared these estates to be alienable—an indication that, without such an express declaration, there might have been some doubt as to their alienability. Twenty-six years afterwards, when tenures intermediate between the zemindars and the cultivators were first recognized by Regulation VIII of 1819, an express provision declaring them to be transferable was inserted in this law. These legislative declarations lead to the natural conclusion that alienability was not in 1793 an ordinary incident of property in land. That the interest of a ryot or cultivator in the land cultivated by him was at that period alienable or transferable, there appears to have been no contention. As to whether a *khood-kasht* ryot could be ejected while he continued to pay his rent there was some difference of opinion, the stronger view being that he could not. That his interest was heritable appears to have been generally supposed; but that he could not sell it, was expressly admitted by the highest authorities.[1]

Ryots' holdings not transferable at the time of the Permanent Settlement.

This view endorsed by the Legislature.

The Legislature of the period appears to have adopted this view. Clause 7, section 15, Regulation VII of 1799 speaks of a "lease-holder or other tenant having a right of occupancy only so long as a certain rent or a rent

[1] See *Selections from the Revenue Records of the North-West Provinces* published in 1866, pages 252 *et seq.* Sir John Shore says in his minute of June 1789:—"But though his title is hereditary, yet the ryot cannot sell or mortgage his land."

determinable on certain principles according to local rates and usages be paid, without any right of property or *transferable possession.*" Section 32 of Regulation XI of 1822 speaks of a *khoodkasht, kudeemee ryot,* or resident and hereditary cultivator having a prescriptive right of occupancy, and section 33 speaks of a *transferable* or hereditary right of occupancy; but I believe that there is no passage in the earlier Regulations which recognizes the transferability of a ryot's holding.

Interests in land sooner or later become alienable.

But though alienability is not an ordinary incident of landed property in its early stage, there can be no doubt that the tendency of development is in this direction, and that in most countries all kinds of property in land sooner or later become alienable. These provinces form no exception to the operation of this general rule. Once the Legislature had declared estates and then *patni* tenures to be transferable, the idea of alienability as an incident of property in land rapidly developed itself, and we soon find the Courts and the Legislature dealing with under-tenures which were *transferable by their title-deeds or by the established usage of the country.* That the idea should be extended to ryots' holdings was only a natural progress, and accordingly in many parts of the country the ryot's holding became to be regarded as transferable. This result was no doubt brought about in some measure by the zemindars bringing these holdings to sale in execution of their own decrees for rent. Saleability for arrears of revenue or rent has usually been the first step towards alienability. The sale of a holding at the request, and therefore with the consent, of the landlord is of course different from a sale without the landlord's consent or even in opposition to his wishes; but once the former kind of sale had become common and usual, the idea of transferability took root and gained ground, and the holding came to be sold without the landlord's consent being asked. Instances of these sales multiplied, and at last a local custom became tolerably well established. There can be little doubt but that the process was greatly facilitated by the want of any rules for entering such transfers in the landlord's sherishtah,

Rise of local customs of transferability of ryots' holdings.

and by the habit, alluded to in the note at page 10 of the Digest, of receiving the rent of a holding from any person who brought it, without enquiry as to whether such person, when not the known tenant, was the duly appointed agent of such tenant, making the payment on his behalf.

Right of occupancy *per se* not transferable apart from holding as affected by local custom.

These local customs of transferability have been well established in some estates and in some parts of the country, whilst in other parts they are in various stages of formation, and in many places they have not come into even an embryo existence. That the right of occupancy, which is the creature of the statute, is not transferable *per se* and apart from the holding as affected by local custom, has been decided by a Full Bench of the High Court. Such being the present state of things, and the tendency being for all interests in land (leasehold interests included) to become alienable, the question is, should the Legislature step in, anticipate the progress of this tendency, and declare that every holding in which a ryot has acquired or shall acquire a right of occupancy shall be transferable?

Should all holdings, in which a right of occupancy has been acquired be made transferable?

Arguments against transferablity.

The arguments advanced against making this legislative declaration are briefly as follow:—

1—that the unrestricted sale of land is politically undesirable on grounds peculiar to India, as tending to disturb the ancient families and create a disaffected class possessed of a certain influence;

2—that the facility of borrowing, which will be created for the ryot by his having a valuable interest in land to offer as security, will encourage him to indulge in improvident expenditure upon festivals, upon marriages and funeral ceremonies;

3—that his present indebtedness to the mahajan, being increased in this way, will rapidly lead to the sale of his holding in satisfaction of the mahajan's claims, whereupon his last state will be worse than his first;

4—that the majority of ryots' holdings, which will be brought to sale in this way, will be purchased by the mahajans, who will in all probability cultivate them through their former owners reduced to a state of serfage;

5—that mahajans and their interests thus introduced into estates will interfere with, disturb and injure the interests of, the zemindars;

6—that it will be a serious injustice to landlords to confer upon ryots without consideration transferable and heritable interests in land, which now fetch large prices paid by way of fine (*salámi*) or otherwise, inasmuch as a valuable source of income will be thus taken away;

7—that, the dread of ejectment being removed, ryots will become less careful about paying their rents, remembering that the worst that can befal them is a sale, upon which they will receive a sum of money, viz. the surplus sale-proceeds (if any);

8—that the ryot, who has a right of occupancy, at present enjoys a considerable advantage in paying less rent than the ryot who has not a right of occupancy; and that to make him a present of these surplus sale-proceeds is to confer upon him at the expense of the landlord a further benefit to which he has no equitable claim;

9—that when zemindars are at feud, the new law will enable one to purchase holdings in his rival's *zemindari*, and so obtain a footing for the purpose of attack and harassment;

10—that ryots will also harass their *zemindars* by purchasing holdings in the names of men of straw, who will exhaust the land, and from whom the landlord will be unable to recover his rent;

11—that the zemindar will never be able to get his land into his own possession, as it will pass from hand to hand by sale out of his reach;

12—that a zemindar will no longer be able to choose his own ryots;

13—that landlords will be compelled to take steps to prevent their ryots from acquiring a right of occupancy, which will carry with it so many inconvenient consequences;

14—finally, that in Behar the ryots are too poor to purchase holdings, which will therefore be put up for sale in vain.

Majority of these arguments regard only the interests of zemindars.

On reading this summary of the arguments advanced against transferability, one cannot but be struck with the fact that the majority of them proceed merely upon the ground that the proposed measure will be unpleasant or injurious to the zemindars. Such arguments tacitly assume that no measure should be passed into law which is unpleasant or injurious to a particular class in the community; and this is a proposition which cannot properly be conceded by any Government. That no measure should be passed into law which is unpleasant or injurious to any class, unless this unpleasantness or injury is more than counterbalanced by the benefit thereby conferred on other classes or on a more numerous class, is the true form of the proposition, and in this form only can it be fairly applied as a test of the wisdom of the proposed or any other measure. But the advocate of the zemindar may say that, having shown the injury that will be caused to the interests which he has to defend, he has fairly fulfilled his duty until the authors of the measure show the greater counterbalancing benefit that it will confer upon other portions of the community. This sounds sufficiently reasonable, and it is not necessary on the present occasion to consider the possible objection of those who might contend that it lies upon the zemindars to show that they have fulfilled that very essential condition of their proprietorship, that duty towards their ryots "indispensably required" of them by the deed in which the Permanent Settlement is embodied. In briefly examining the above arguments, those of them shall therefore receive due attention which have been brought forward to show the unpleasantness or injury which would be caused to the zemindars, if all holdings in which a right of occupancy has been acquired were made transferable.

First argument—Transferability politically inexpedient.

1—The *first* argument, that the unrestricted sale of land, having for its effect the disturbance of the ancient families and the substitution of money-lenders, traders and other *novi homines*, is politically undesirable, may be conceded to be true—true, that is, where it is applicable; true, for

example, of large estates, which have been for centuries or at least generations in the possession of families, whose greatness or importance has been associated therewith or supported thereby: but this argument may safely be said to have no application to such humble folk as Bengalee ryots, or to such very small estates as their holdings.

Second argument —Ryot will borrow on the security of his holding and launch into extravagance.

2—The *second* argument is that the ryot, finding himself the possessor of a valuable property, and able to borrow money upon the security of that property, will enter upon a career of extravagance, celebrating the worship of his gods with grateful munificence; conducting the marriage rite with rustic splendour; with ampler libations and less frugal cakes making his deceased ancestors partakers of his better luck; and taking no count of the cost until insolvency and ruin overtake him. No doubt men are not made thrifty by Act of Parliament; and there may be instances in which unthrift will grow up into extravagance, to be too soon followed by the usual results, and the transfer of the paternal bigahs to a more economical cultivator, who in order to become a purchaser must have saved or otherwise acquired the necessary capital. Such instances will not, however, be wholly mischievous, inasmuch as they will be lessons in thrift to the agrarian community. It is impossible, however, to assert that they may not become too frequent, and so inspire recklessness instead of teaching economy. The danger is one which some persons, very competent to form an opinion, consider to be not theoretical merely; and which the Legislature ought not wholly to overlook. That, immediately on the measure being passed into law, all the ryots in the country will incontinently rush together down the *facilis descensus* of extravagance is not probable or, indeed, possible; for the mahajans could not at once accommodate the whole rural population with the requisite funds; and a considerable majority would have perforce to wait for their turn to ruin themselves. If too many holdings were brought into the market at the same time, the inevitable result would be that they would be sold for little or nothing; and the

mahajans might be expected to have more sense than to defeat their own ends in this manner. The course of things would thus in all probability be gradual, and meantime the "magic of property" might be expected to exercise a counteracting and beneficial influence. The experience of most countries and of some parts of Bengal, where the zemindars have seen their interest in creating for a suitable price heritable and transferable holdings, is in favour of the hope.

Third argument—That, as a result, ryots' holdings will rapidly be brought to sale in satisfaction of mahajans' debts.

3—The *third* argument is merely a continuation of the second. The ryots will get into greater debt to the mahajans, borrowing money on the security of their holdings, and the mahajans will sell these holdings to realize the money due to them. With the example before us of what has actually occurred in other parts of India, it is impossible to say that no danger to the Bengalee ryot is to be apprehended in this direction. Eastern races are none of them remarkable for thrift; and nothing has yet transpired to show that Bengalees are a notable exception to this general rule. Thrift is a plant of slow growth, while the figures of a mahajan's account multiply and increase with all the rapid powers of growth, which astonish in the tropics. We are just now devising a cure for mischief done by mahajans in other provinces: prevention is ever better than cure. May it not be well to benefit by the experience now before us, and so prevent a similar mischief in Bengal? Few ryots can read or write or understand accounts. Every ryot is therefore at the mercy of his mahajan in respect of his account, and the most honest mahajan has, on the subject of interest, and rests, and general computation, views which are most naturally very conducive to his own benefit, while about the ryot's benefit he does not trouble himself, holding that a man has enough to do to look after his own business. As a mode of prevention, it has been suggested that the ryot should be expressly declared incapable of mortgaging his holding. A man, it is said, who will absolutely refuse to sell, will not hesitate to mortgage; and once he has mortgaged, he has put one foot in the quicksand from which he can

never emerge, his attempt to free one member resulting in the involvment of the other also. It may be also suggested that whenever it is sought to bring a ryot's holding to sale in order to satisfy a mahajan's claims, it shall be the duty of the Court on the petition of the ryot [or his landlord] to open the whole account from the beginning, make the mahajan prove all the transactions throughout, and cut down his claim to sums (or the value of grain) actually lent with twelve per cent. simple interest. It would throw no unreasonable burden on the Courts to deal with isolated cases of this kind that might arise from time to time. Probably the knowledge on the part of the mahajans that such a provision existed would operate to make the number of cases comparatively few.

Fourth argument—That the mahajans will purchase the ryots' holdings, and the ryots will become their serfs.

4—The *fourth* argument is that the mahajans will buy up all the holdings which are brought to sale and that the ryots, sooner than leave their ancestral homes and fields, will agree to carry on the cultivation for the mahajans on any terms that the latter may wish to offer; that thus the ryots, if not reduced to a condition nothing better than slavery, will at least descend a step in the agricultural scale, and become *koorfas* or *bhagjotedars*. Disciples of the western school of political economy may contend that, as the mahajans are the only capitalists in the country, this will bring capital into union with the land, from which great results may be anticipated. It is not necessary to discuss the probability of mahajans introducing steam ploughs or cutting the rice crop by agricultural machinery yet to be invented, for there is not much chance of any immediate attempt being made to introduce capitalist farming into these provinces. If the mahajan ever become the purchaser of ryots' holdings to any considerable extent, this certainly will not be his *modus operandi*, at least if we may form an opinion from any experience which the country has hitherto supplied. Whether the mahajan is likely to invest his capital to any great extent in the purchase of these holdings, if the Legislature interpose no bar to his doing so, is a question not

very easy to answer; and the correct answer would probably vary with different parts of the country. In some parts of Chota Nagpore, mahajans and *baniahs* have become large purchasers of ryotee holdings. Rents are low and labour is cheap, and the margin of profit upon cultivation is sufficiently large to make the speculation profitable. In Backergunge, on the contrary, the mahajans have not shown any disposition to invest in the holdings, which are commonly transferable by the custom of that district. There are even in the present state of the law some difficulties in the way of mahajans becoming purchasers: and, if any real danger is to be apprehended, it will be very easy to interpose further difficulties. A decree-holder cannot now bid at an execution sale without the permission of the Court. The prohibition might be made absolute in respect of these holdings, and one mahajan would not then be very anxious to bring to sale a profitable holding in which he had sunk his money, when another mahajan might step in and purchase it. Then residence might be required in order to entitle to the full enjoyment of the rights of a ryot having a right of occupancy in a transferable holding. Such a rule now prevails in the Mymensingh district, and it would be merely a return to the old custom of the country in respect of *khoodkasht* ryots. A further check would be to limit the quantity of land which could be held by one person in the enjoyment of these particular rights.

Fifth argument—Mahajans will purchase ryots' holdings and harass the zemindars.

5—The *fifth* argument, namely that mahajans by purchasing ryots' holdings will obtain a footing in the estates of zemindars and, by setting up rival interests, injure the proprietors, is included within the scope of the observations that have just been made. For the rest, zemindars who take a proper interest in the management of their estates can find little difficulty in holding their own against the mahajans.

Sixth argument—Zemindars will be unjustly deprived of a source of income,

6.—The *sixth* argument is that zemindars derive a considerable income from granting heritable and transferable interests in land, and that of this income they will be unjustly deprived, if all ryots' holdings be made by law trans-

ferable. It would have been more satisfactory if this argument had been supported by some figures, for these alone can show how much it is worth. It is to be borne in mind that the measure can affect those holdings only in which ryots have acquired a right of occupancy. Now these holdings are not at the zemindar's disposal to grant to new tenants upon a transferable tenure for a consideration. It is not suggested that any ryot, who already has a right of occupancy, will pay a *salâmi* to his landlord for the mere purpose of obtaining transferability, and I am aware of no instance in which this has ever been done. The holdings, then, with which the zemindar can deal in the way suggested, are those only which may lapse through want of heirs, or from which ryots may be ejected for non-payment of rent—and these must be comparatively few. Then there are other considerations. A ryot, unless for causes beyond his own control, will not be likely to let a valuable holding slip from his possession. If zemindars could obtain large prices for the grant of transferable holdings, why should they of their own accord bring these holdings to sale in execution of their decrees for rent, as beyond controversy they have done in very many instances? The result of their doing this instead of ejecting the ryot is that, whatever the holding is worth over and above the amount of the decree with costs, goes into the pocket of the ryot instead of that of the zemindar. Then there are some persons who may be prepared to say that any zemindar who derives a large income from granting in a transferable shape holdings once in the possession of occupancy ryots must have disturbed the original holders by unfair or violent means, and that enquiry will here show instances of that oppression which has from time to time been charged against the zemindars as a body. This is not, however, an argument which should be accepted without proof of the facts upon which it is based.

if transferability be given to the ryots *gratis*.

7—The *seventh* argument is that the dread of ejectment being removed, ryots will become less careful to pay their

Seventh argument —That ryots

will become less careful to pay their rents.

rents, knowing that the worst that can befal them will be the sale of their holdings, whereupon they will obtain a sum of money, if the sale produces more than the amount of the decree. In this shape the argument is worth very little. To make it worth anything, it must be beyond doubt that a considerable number of ryots will act in this way; and, *secondly*, that the zemindars will be injured by their so acting. Now, it is exceedingly improbable that, when these holdings have been made *more* valuable than they formerly were, the ryots will become *less* careful to keep them. Until the thing has come to pass, this cannot positively be asserted to be a necessary result of the measure. We can at present reason only upon probabilities, and it is impossible to say from antecedent experience that this is probable. Then the argument assumes that the holding is sold for more than the amount of the decree. The zemindar therefore receives his claim in full; and as he suffers no injury, the argument proves nothing so far as he is concerned.

Eighth argument—It is unfair to the zemindar to give the ryot the surplus sale-proceeds.

8—The *eighth* argument is, that it is not fair to the zemindar to give the surplus sale-proceeds to the ryot, and this argument is strengthened by the allegation that the right-of-occupancy-ryot already enjoys a considerable advantage in paying less rent than a ryot who has not a right of occupancy. This allegation is not universally true, for there is conclusive testimony that in some districts or parts of districts the right-of-occupancy-ryot pays a higher rent than the ryot who has no right of occupancy. Probably these cases form the exception and not the rule: but to the extent to which this exception goes, the allegation, which is produced in aid of the argument, is weakened. The value of the argument itself is further weakened by the voluntary action of the zemindars in bringing ryots' holdings to sale in execution of their own decrees. But suppose that a certain amount of these surplus sale-proceeds will be put into the pockets of the ryots instead of coming into the zemindars' hands in the shape of *salâmi*, two questions arise—(1) has the ryot no equitable claim upon this money? (2) will the zemin-

dar be in no way compensated for what he loses? As to the first question there can be little doubt that a holding, which will fetch any considerable price, must be in a condition of productiveness and improvement, and no inconsiderable share of this improvement depends upon the former tenant in the majority of cases. No doubt there are numerous cases in which a considerable portion of the price depends upon advantages of situation, natural powers of production, and other circumstances in no wise created by the tenant or his labour; but to estimate the matter rightly, it may be borne in mind how very rapidly in these provinces land left uncultivated returns to its original state of jangal. Now, the question of compensation for improvements to tenants removed from their holdings has arisen in every country, and is sure to arise sooner or later in Bengal. Experience has elsewhere shown it to be a very difficult question to deal with; and, if it ever have to be tried upon evidence in these provinces, its trial is tolerably certain to cost both parties a very considerable sum with very unsatisfactory results. The plan of selling the holding as it is, all improvements included, and making over the surplus sale-proceeds to the former tenant gets rid of all these difficulties. If the landlord have improved the value of the holding, the law gives him the benefit in the shape of enhanced rent. Then, secondly, as to the question of the zemindar being otherwise compensated, the argument assumes that ready purchasers will be found in all cases for these holdings, and this being so, the zemindar is assured of his rents, and his present difficulties caused by their non-payment disappear.

Ninth argument —Rival zemindars will purchase holdings for purposes of harassment.

9—The next argument is that when two zemindars are at feud, one will purchase holdings in his rival's zemindari and make them a basis of operation against the latter. This difficulty may be dealt with in the same way as the mahajan difficulty; but, in truth, the argument proceeds upon the assumption of a state of things no longer in existence, when rural wars were carried on with the aid of lattials, and it was of great importance to have a legal right to a

position in the enemy's country, which could be made the base of active operations as occasion required. To obtain such a position was in *zemindari* politics quite as important as the acquisition of Cyprus or the command of the Straits of Gibraltar is to the British Government. Here, as upon the mahajan argument, it may also be observed that the zemindar, who dreads the intrusion of a rival zemindar or a speculating money-lender into the privacy of his estate, can prevent such intrusion, so far as execution sales are concerned, by himself buying in all holdings put up for sale.

Tenth argument—Men of straw will purchase the holdings, and the zemindars will be unable to recover their rents from them.

10—The *tenth* argument is that men of straw will purchase the holdings and exhaust the land and the zemindars will look in vain for their rents. The purchase may be made either privately or at an execution sale. If made privately it must be collusive, as the hypothesis excludes a *bonâ fide* sale for a valuable consideration: and it is not easy to see what is likely to be the object of the collusion. If the holding be unprofitable, the tenant can relinquish it. There is no proposal to alter the law of relinquishment. If it be profitable, the real holder can be supposed to transfer it to a man of straw merely for the purpose of getting the crop and not paying the rent. The zemindar can prevent this by distraining.[1] If he omit to distrain, he can sell the holding for the arrear of rent which, as the holding is valuable, must thus be realized. If the zemindar omit to distrain or bring the holding to sale, until the arrears have become too large to be realized by either method, he can justly blame his own *laches* only. Then in the case of an execution sale, the price must be *bonâ fide* paid, and men of straw are not likely to avail themselves of this method.

Eleventh and twelfth arguments—Zemindars will be unable to get khas possession of their own lands or choose their own ryots.

11 & 12—The *eleventh* argument is that zemindars will never be able to get possession of their own lands, but it is not explained how this will endamage them. It might be supposed that to have their lands on their hands without

[1] It must be borne in mind that this remedy is not available against *patnidars*, who are therefore reasonably required to give security, as otherwise, having collected the rents from the cultivators, they might pocket them without paying the zemindar's rent.

tenants, would be the last thing they would desire. Certainly their fathers did not desire it, and they directed their best efforts to get tenants, using strong inducements occasionally when ryots did not come readily. If it be meant that zemindars will be unable to get *ryoti* land into their *khas* possession and turn it into *khámar* land, the answer is that by the common law of the country they have no right to do this, and that the measure is all the more desirable, if it have the effect of preventing them from doing that which they have no right to do. The *twelfth* argument, that the zemindars will be unable to choose their own ryots, is merely the expression of a sentimental grievance. If the Legislature would properly listen to this argument of freedom of choice, it would be bound, in order to be consistent, to alter the native marriage laws without delay.

Thirteenth argument—Zemindars will be compelled to prevent the acquisition of the right of occupancy.

13—The *thirteenth* argument partakes in some respect of the nature of a threat, and cannot therefore be expected to carry much weight. The great majority of the ryots have already acquired the right of occupancy: and in respect of those who have not, the Legislature is not likely to be much moved by the fear of that being done, which it has permitted to be done, and which it could prevent from being done by a stroke of the pen.

Fourteenth argument—Behar ryots too poor to buy holdings, if offered for sale.

14—The *fourteenth* argument concerns Behar alone. It is said that in this part of the country the measure will prove abortive, as the ryots are too poor to buy these holdings, and that transferability without purchasers will be as useless as a coach without horses. Admitting this to be so, it is no reason why holdings should not be made transferable in the Bengal districts: and it certainly is a reason why something should be done to raise the Behar ryots from their present state of poverty and degradation.

Arguments in favour of transferability.

Let us now examine the arguments in favour of making these right-of-occupancy holdings transferable. The first and the strongest is that the history of many countries shows that an agricultural community, who are the owners of, or have something in the nature of ownership in, the

First argument—The magic of property.

land cultivated by them, spontaneously develop an amount of industry and thrift, which result in a state of prosperity to be found amongst the cultivators of the soil under no other conditions: that, therefore, there is a very strong probability that, if these conditions be introduced into these provinces, this satisfactory result will follow. Of the truth of the proposition contained in the first portion of this argument there can be no doubt. Mr. John Stuart Mill in his work on Political Economy, and M. Emile De Laveleye in his recent work on Primitive Property have collected a mass of evidence, which establishes beyond a doubt the great prosperity of peasant proprietors, and the influence of peasant properties in stimulating industry, in training intelligence, in promoting forethought and self-control. "The magic of property," says Arthur Young, "turns sand into gold." If these wonderful results have been brought about in other lands by peasant proprietorship, we may reasonably (it is argued) expect similar effects from similar causes in Bengal. Englishmen have often been accused of having an insular prejudice in favour of their own habits and customs, a blind belief in the efficacy of their own institutions, wherever introduced, no matter how different the circumstances, how diverse the character of the people to be affected by their application. On the present occasion, however, this charge cannot be made: we cannot be misled by any favourite predilection. Peasant properties have never found favour in Great Britain. Capitalist farming has been the agricultural creed of our nation. If then Englishmen in India have come to believe in the wisdom of promoting peasant proprietorship in this country, it may reasonably be claimed for them that they must have been very strongly impressed with the suitability of that, in favour of which they had no early or original bias.

But it may be said that converts to a new faith are ever more eager for its propagation than those who have been brought up familiar with all its doctrines: and that in the Deccan ryots we have an example and a warning, how differ-

ent may be the effects of peasant proprietorship in India. We ought, no doubt, to be made cautious by the example and ought not to despise the warning. Institutions are like plants. They may flourish in one climate as well as another, if only due attention be paid to guard against the particular unfavourable influences which each climate presents. Even when they do not flourish equally well in one particular place, owing to the want or deficiency of something which stimulates their growth and development, a sufficient degree of success may be obtained to make the cultivation pleasurable or even profitable. If peasant proprietorship fail to accomplish in Bengal all that it has accomplished in some other countries, because the Oriental is naturally more indolent and less frugal and thrifty than the native of the West, than the inhabitant of colder latitudes where the earth yields her fruits but once in the year, and food and clothes and shelter have to be provided for a long winter, it may nevertheless work some amount of good, and may considerably improve the condition of the Bengal ryot, which is certainly not likely to be ameliorated under the present state of things. Any improvement that may be effected will of course be gradual, and more than one generation must pass away before a final opinion can be pronounced upon the question of failure or success. The probability that peasant proprietorship will not fail to produce in Bengal some of the fruits which it has borne in other countries is considerably strengthened by what has already taken place in the Backergunge district and other portions of Eastern Bengal, where, owing to the creation of a particular class of tenures, a wonderful amount of industry and thrift have been developed in a most enervating climate.

How far peasant proprietorship is possible in Bengal.

But it may be said that peasant proprietorship is not possible in Bengal. The zemindars are the proprietors; and unless Government intends to buy them out, the ryots cannot be converted into peasant proprietors. It may at once be conceded that absolute ownership cannot be conferred on the ryots; and it may be added that absolute ownership, a

title in fee simple, is by no means necessary to that peasant proprietorship which has been found so efficacious to teach the cultivators of the soil industry and thrift and frugality. Let the peasant be secured against eviction: let the demand upon him for rent be fixed, let him be assured that this demand cannot be arbitrarily increased, and that after discharging it the fruits of his industry are his own, to be openly and fearlessly enjoyed, safe from the cupidity of anyone: and let him know that his holding has a money worth, an exchangable value (alienability is an essential attribute of property)—and he will have all the inducement that proprietorship can afford to encourage him to labour for the improvement of his condition. Up to 1859 the Bengalee peasant had neither security from eviction, nor fixity of the demand for rent, nor the power of transferring his holding. There is little cause to wonder that his condition was not much bettered between 1793 and 1859. He could have little inducement to improve his holding, when he reflected that, if he made it worth more rent than he paid, his landlord might turn him out and let the land to another tenant. He could have little encouragement to better his condition of living when he knew that the external signs of greater ease and comfort would excite the cupidity, if not of his landlord, then of his landlord's *amlah*, who, employed at a mere nominal remuneration, were tacitly licensed to prey upon the ryots, and used the license to its full extent and beyond, the law itself assisting them with the *Haftam* and *Panjam* procedure. This procedure was based on a presumption (not warranted by experience) that in every dispute between zemindar (or zemindar's *amlah*) and ryot, the ryot is in the wrong unless he can prove himself to be in the right. This presumption had the effect of shifting the burden of proof: and, having regard to the defects inherent in evidence in India, the party who started with such a presumption in his favour had a very much greater advantage over his adversary than he would have in a country where perjury and forgery are not cheap and common. In 1859 the ryot was relieved

of this burden laid upon him by a fiction which presumed him to be less honest than his landlord's *amlah:* his liberty was made complete by taking away from zemindars the power of arrest before judgment in their own cases: and he was further secured against eviction from his holding by the arbitrary act of his landlord. It is just twenty years since these changes were made; and, in estimating their effects, it should be borne in mind that it took some time to make the ryots acquainted with what had been done, and enable them to understand their new rights Emancipated slaves are very apt to turn their liberty into license, and it is not surprising if the ryot, released from thraldom to his zemindar, for a moment imagined himself sufficiently independent to pay or not pay any rent, as he pleased. The failure of the enhancement law in the hands of judicial officers, the determined action of Government in the matter of *abwabs*, the security to person and the suppression of *lattialism*, which have been the results of the sub-divisional system and of the Magistrate being brought near to every man's door, have contributed largely to encourage this independence, and there is no doubt that the ryot is in many parts of Bengal much more independent and self-reliant than he was twenty years ago. This independence and self-reliance, if properly guided and trained, will certainly bear good fruit. Just at this moment one of the most important steps that can be taken in training is to fix the demand upon the ryot for rent, and to make him understand that this demand once fixed must be complied with faithfully and punctually. The Act of 1859 gave him security against eviction: the settlement of the enhancement question will give him fixity of demand for rent: and if transferability be added, the Bengalee ryot will have a peasant proprietorship complete in all particulars essential to the creation of thrift and industry.

It may be said that security against eviction and fixity of the demand for rent are sufficient without transferability. It might be enough to point out in reply that alienability is

necessary to complete the idea of property, that in every country this quality is sooner or later annexed to every thing that is made the subject of property, and that here in Bengal this tendency has spontaneously shown itself in a very marked manner in respect of these very holdings. But there is another point of view from which the question may be considered, and which may possibly supply an argument of some force in favour of transferability. There can be little doubt that, when interests in land cannot be transferred, they are sub-let. A lease is only a form of conveyance: and where there are difficulties in the way of an absolute transfer, mortgage and lease are substituted therefor. The enormous amount of sub-letting that prevails in these provinces, and the very common lease by way of mortgage may in some respect be attributable to a common unwillingness to give up the position of ostensible owner, but are mainly due to the fact that an absolute transfer requires the landlord's consent, and that in order to obtain this consent a sum of money must be paid. There being thus a considerable difficulty in the way of an absolute transfer, while there is none in the way of a sub-lease (see note at foot of page 38), sub-letting has become the form in which alienabilty, not to be suppressed, has asserted itself. I shall not produce any arguments to prove the mischief of sub-letting, the banefulness of middlemen, the rapacity of the petty landlord at the bottom striving to widen the margin of his profit by squeezing the unfortunate ryot with the help of all the pressure transmitted from above. These things are familiar to all who have any experience or knowledge of the subject; and there can be no doubt of the beneficial influence of any measure that will diminish or stop sub-letting. There can be no doubt that transferability will tend to diminish sub-letting: and if the introduction of transferability be accompanied by the putting of positive checks on sub-letting (and this cannot be safely done, while transferability is not established, for alienability will not be dammed up *in toto*), there is every

Transferability *versus* sub-letting.

reason to believe that much good will result. Sub-letting grinds the cultivator down and converts him into a pauper cottier: it paralyses his industry and takes away every motive for thrift. Transferability, on the other hand, encourages thrift, for without saving land cannot be purchased: and when, instead of tenancy at the landlord's will and uncertainty of demand for rent, fixity of this demand and security against eviction are added, we have all the motive to industry that the magic of property can be supposed to create.

Is it desirable to limit by law the number of middlemen?

And here it may be observed that there is little use in stopping sub-letting by the ryot, if the creation of middlemen between the ryot and the zemindar goes on without interference. The ryot may thus be prevented from rising into a middleman, but he will not be saved from being ground down into a cottier. It may be a proper subject of consideration whether the Legislature would not properly limit the number of degrees of middlemen that may be created in future. There would be some difficulty in interfering with those which have been already created.

Sub-letting might be permitted in certain cases.

Sub-letting might be permitted in the case of females, minors, lunatics and persons permanently disabled by old age, disease or accident; but only so long as the holding belonged to a person labouring under any of these disabilities, and to whom it had come in the ordinary course of inheritance. The sub-lessee should be debarred from acquiring any rights save those of a tenant from year to year with reasonable provision for the away-going crop. Any other sub-letting than this should work a forfeiture of the right of occupancy. Any sudden hardship might be prevented by saving existing sub-leases for any term not exceeding two or three years: and by providing that the penalty for the first violation of the rule in future shall be a fine of one year's rent recoverable by the landlord; the penalty for a second violation, a fine of two years' rent; and the penalty for the third violation, forfeiture. Every sub-lease made in opposition to the rule should be declared absolutely void.

This would prevent the rule from becoming a dead letter through the apathy or connivance of the landlords.

Pernicious influence of ijarahdars or farmers.

There is one class of middlemen, to be found in Behar especially, as to the pernicious influence of whom there is a general unanimity of opinion, namely, the *ijarahdars* or farmers. These persons farm the rents only, having no specific interest in the land itself. Their leases are for a term merely, and having no permanent interest in the property, they omit no effort to extract *per fas aut nefas* the last cowrie from the unfortunate ryot. It has generally been considered that these persons, as lessees of the landlords, are entitled to exercise all their powers, including those of enhancement and ejectment. It may be deserving of consideration whether it would not be well to limit the exercise of these powers to persons who have a tenure or estate in the land itself and are something more than mere farmers of rents.

Holding may be transferable by private contract, or saleable for its own arrears of rent. The latter attribute soon introduces the former.

The question of transferability may be considered from two points of view—(1) a holding may be transferable by private sale; (2) it may be saleable in execution of a decree for arrears of its own rent. A holding or tenure may possess both of these attributes: and it is in accordance with the custom of the country that it should possess one without the other. As a matter of experience, however, saleability for arrears of rent soon introduces transferability by private contract, for, if A wants to sell his holding and B wants to buy it, A has only to refrain from paying his rent, the holding is brought to sale in consequence, and B can bid for and purchase it. Some persons have advised that ryots' holdings should be made saleable for their own arrears of rent, but not transferable by private contract, thinking that in this way the *mahajan* difficulty could be avoided. As by the hypothesis the ryot is wholly in the mahajan's power, and cannot pay his rent unless and until the mahajan supplies the funds, this would merely enable the mahajan to regulate the sale to suit his own convenience.

Argument in favour of transferability from facility of execution of decrees for rent.

The next argument in favour of transferability is based upon the advantage to the landlord of these holdings being saleable for arrears of their own rent. The strongest point of the complaints urged against the present rent-law procedure is concerned not with the delay in obtaining a decree, but with the delay and difficulty in getting the decree executed, once it has been obtained. The experience of the Courts entirely corroborates this. The average ryot is too poor for process against his movables to be productive of much result. His cattle are easily got out of the way: or if attached are made the subject of false claims by third parties, rendering a service which they expect to receive in turn when they have occasion for it. He seldom or never possesses immovable property. To take him on a body warrant is merely to add to costs, the chance of realizing which is thereby diminished. If the ryot's holding were saleable in execution and would fetch at least sufficient to satisfy the decree and costs, the landlord's execution difficulties would at once disappear. It has occurred to several experienced officers that the landlord's realization of his rents might still further be facilitated by applying to these occupancy holdings the procedure of a summary sale without a decree embodied in Regulation VIII of 1819, and which the experience of sixty years has shown to be remarkably efficacious in securing the punctual realization of the rents of a certain class of tenures. Whether this procedure would prove equally efficacious in the case of *ryoti* holdings, it is scarcely possible to say without making the experiment: but with the security of a decree it might be safe to allow an immediate sale upon the oral application of the decree-holder, such sale not to be stayed by the institution or pendency of an appeal, but to be reversible in appeal on grounds similar to those on which a *patni* sale can be set aside under the existing law.

Further argument in favour of transferability

A further argument in favour of transferability has already been touched upon above, namely, that, by substituting sale of the holding for ejectment of the ryot, the

from avoidance of question of compensation for improvements.

question of compensation for improvements is got rid of for ever. The price paid for the holding at the execution sale will represent its improved value. The amount of the decree and costs being deducted, the balance is handed over to the late tenant, who thus receives the value of any improvements effected by him. As to improvements effected by the landlord, he can either make a special contract with the ryot before carrying them out, or proceed under the law to enhance the rent, if the productive powers of the land have been increased by such improvements. The question of compensation for tenants' improvements is sure to arise in Bengal as it has arisen in other countries, and it is exceedingly difficult to deal with satisfactorily. "The Landlord and Tenant Act" passed for Ireland in 1870 (33 and 34 Vict. Cap. 46), and "The Agricultural Holdings Act" passed for England in 1875 (38 and 39 Vict. Cap. 92) supply instances of rules for compensation, which the Courts would find some difficulty in working in these provinces. I have said that this question of compensation for tenants' improvements is sure to arise in Bengal. The following considerations will show that this assertion in not too strong. Provision has already been made for the point in "The North-Western Provinces Rent Act" (see sections 44, 45, 46, and 47 of Act XVIII of 1873); and "The Land Improvement Act" (XXVI of 1871) provides for advances to tenants by Government for the purpose of making agricultural improvements.

I have endeavoured to state succinctly the arguments that have been or may be urged against or in favour of making right-of-occupancy holdings transferable. If I have overlooked or omitted any argument that may be further advanced on either side, I trust that those whose interests are concerned will point out the omission. If the decision be ultimately in favour of transferability, the following points may then be deserving of consideration:—

1.—Should the idea of transferability be completed by making these holdings mortgagable and devisable, either or both?

2.—What fees or fine should be payable to the landlord on registering the transfer? It is worthy of observation that landlords admit that these holdings may be transferred with their consent previously obtained. Now their consent can usually be had, if paid for. This being so, the question whether these holdings should be made transferable really comes, so far as they are concerned, to this—should they be allowed to exact what transfer-fees they please, or should a scale be laid down which will be fair and equitable to all parties concerned?

3.—The great object of the Legislature should be to keep these holdings in the hands of actual cultivators. Should the landlord be allowed to refuse to register a transfer on the ground that the transferree was not a *bonâ fide* cultivator, provision being made for a summary inquiry and adjudication similar to that provided by section 6 of Regulation VIII of 1819, when the zemindar refuses to register the transfer of a tenure on the ground of the security being insufficient?

4.—The object being to create peasant holdings, each large enough to maintain an average family in comfort, consider whether provision should not be made (1) to prevent these holdings from being increased beyond a certain size; and (2) to prevent *morcellement*—to prevent them from being split up into parcels too small for the support of a family. I have in a previous paper referred to the measures taken by Continental nations to secure both these ends.

5.—Should provision be made for the consolidation of small holdings, when in the possession of a single individual? Persons, who hold more than a single family can cultivate, will generally be found to have sub-let the surplus. The sub-tenant might be secured in his possession.

6.—As these holdings if made transferable will become more valuable, consider whether in future mere holding or occupancy for twelve years should create these valuable rights. It is believed that the quantity of land, in which a right of occupancy has not been acquired, is now very small, consider whether zemindars might not be allowed to turn

this into holdings of the required size, and sell them or take a fee for creating them.

7.—In order to prevent combination for the non-payment of rent, and to compel the ryot to pay with punctuality, consider whether it would be desirable to enact that, in case of the sale of the superior estate or tenure for arrears of rent or revenue, the holding of any ryot, who was half a year in arrear with his rent, should be liable to avoidance.

In concluding this Note it may be desirable to observe that, while examining the arguments which have actually been advanced against transferability, and stating those which have been or may be advanced in favour of it, I have designedly abstained from saying what conclusions I think ought to be arrived at upon a consideration of the whole of the arguments on both sides of the question. If I have indicated my opinion of the value of some of the arguments put forward, I trust it will not be forgotten that to show the worthlessness of a particular argument used against or in favour of a measure is altogether different from accepting the arguments on the other side as satisfactory and convincing, or saying that on a review of all the arguments the preponderance is in favour of the opposite view. As to the ultimate conclusion, I claim complete freedom to form an opinion hereafter, when I have heard further evidence or argument (if offered) and have had the benefit of deliberation with my colleagues.

APPENDIX II.

NOTE

ON

THE ENHANCEMENT OF RENTS.

So much has been written by so many able persons upon the subject of enhancement, that it is with very much diffidence I offer the following paper on the subject.

Reg. VIII of 1793, section 52. Zemindars to let remaining lands as they thought proper.

The rules for the Decennial Settlement, as finally modified and amended, were embodied in Regulation VIII of 1793, section 52 of which enacted as follows:—"The zemindar or other actual proprietor of land is to let the remaining lands of his zemindary or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following:" and the Regulation then goes on to lay down these restrictions in the next following sections. Let us first ascertain what is meant by "the remaining lands:" let us then examine what were the restrictions under which these remaining lands might be let: and lastly, let us see whether this "letting," was intended to mean and include letting to ryots for the purpose of cultivation.

What is meant by "the remaining lands."

In order to discover what is meant by "the remaining lands," we must examine the preceding portion of the Regulation. The first 47 sections lay down rules as to the persons with whom the settlement should be made, as to the lands included in the settlement, the payment of malikana and other matters concerned with the exact relation existing between the

Government as receiving revenue and the actual proprietors as paying revenue. In these rules we find *inter alia* directions as to what *talookdars*, *mokurraridars* and *istemrardars* were to be considered actual proprietors with whom the settlement should be made, and what *talookdars*, *mokurraridars* and *istemrardars* were to be regarded as leaseholders, holding subordinate to the actual proprietors. Having defined who were the actual proprietors and what were to be the relations between the actual proprietors and Government, the Regulation then proceeds to define the relations between the actual proprietors and the persons holding under them. Accordingly the 48th section commences thus:—"The settlement having been concluded with the zemindars, independent talookdars and other actual proprietors of land, they are to enter into engagements with the several dependent talookdars continued under them respectively, and consequently paying revenue through them, for the same period as the term of their own engagements with Government, provided the talookdars will agree to such revenue, progressive or otherwise, as the zemindar or other actual proprietor of land may be entitled to demand from them. Section 49 then provides for *mokurraridars* and *istemrardars*, who had (1) held at a fixed rent for more than twelve years, or (2) contracted for payment at a fixed rent with the zemindar or actual proprietor; and declares that these two classes are not "liable to be assessed with any increase." The meaning of this term "increase" may be obtained from section 8 of the Regulation, which, speaking of *jangalboori* talooks, describes the pottah given to the grantee as "exempting him from payment of revenue for a certain term, and at the expiration of it subjecting him to a specific assul jumma *with all increases, abwabs* and *mhatoots* imposed on the pergunnah generally." Clearly this "increase" was something different from the *abwabs* and *mhatoots*. It is more clearly spoken of in section 51 as "an increase of jumma," *i.e.* an increase of the *asul jumma*. Section 50 declares that the second class of *mokurraridars* and *istemrardars*

above spoken of, *i.e.* those who have contracted with the actual proprietors for the payment of a fixed rent, are not to be protected against Government if the zemindari be held khas or let in farm. Section 51 then lays down rules to prevent undue exactions from dependent talookdars, viz. that no actual proprietor shall demand an increase from the dependent talookdars, except upon proof that he is entitled so to do either by the special custom of the district or by the conditions under which the talookdar holds his tenure—*i.e.* by custom or contract—or that the talookdar, by receiving abatements from his jumma, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it. Then comes section 52:—"The zemindar or other actual proprietor is to let the remaining lands of his zemindari or estate, *under the prescribed restrictions in whatever manner he may think proper*"—*i.e.* the lands remaining over and above the lands held by the *mokurraridars*, *istemrardars* and dependent *talookdars*, who are by specific provisions protected from an increase of jumma. This is apparently the only possible interpretation that can be put upon the words, seeing that the above are the only persons holding under the actual proprietors, who are mentioned in the Regulation before section 52.

They are the lands other than those held by mokurraridars, istemrardars, and dependent talookdars.

6. Let us now see what are "the prescribed restrictions." They are—

The prescribed restrictions."

1.—*Amilnamahs* must be given to persons taking charge of lands or collections on behalf of actual proprietors (s. 53).—

2.—All impositions under the name of *abwabs*, *mhatoot*, &c., having from their number and uncertainty become intricate to adjust and a source of oppression to the ryots, were to be consolidated with the asul into one specific sum (s. 54).—

3.—No new *abwab* or *mhatoot* was to be imposed upon the ryots under any pretence whatever, the object being to prevent the creation of fresh uncertainties and intricacies and to keep the

jumma or rent represented by a specific sum (s. 55).—

4.—Where it was "the established custom to vary the pottah for lands according to the articles produced thereon," this was allowed to be done, the Legislature, however, expecting that "the proprietors of land, dependent talookdars and farmers of land" (*i.e.* the landlords on the one side), and the ryots (*i.e.* the tenants on the other side) will find it for their mutual advantage to enter into agreements in every instance *for a specific sum* for a certain quantity of land (s. 56).—

5.—The rents payable by the ryots were to be specifically stated in the pottah, which in every possible case was to contain the exact sum to be paid by them. Where this was not possible, as when rent was paid on a measurement of the lands or a survey of the crop or in kind, the rate and terms of payment, and the proportion of the crop to be delivered, with every condition, were to be clearly specified (s. 57).—

6.—Forms of pottahs were to be prepared, and, when approved by the Collector, were to be registered in the Civil Court. Ryots were declared entitled to receive corresponding pottahs (s. 58).—

7.—As soon as the rent was ascertained and settled, a pottah for the adjusted rent was to be prepared and tendered to each ryot (s. 59).—

8.—Leases to under-farmers and ryots made before the conclusion of the settlement and not contrary to any Regulation were to remain in force until their expiry, unless proved to have been granted through collusion or by persons who had no authority (s. 60, cl. 1).—

9.—No actual proprietor, or farmer, or person acting under their authority was to cancel the pottahs of the *khoodkasht ryots*, except upon proof of collusion; or that the rents paid by them within the previous three years had been reduced below *the rate of the nirkbundy of the pergunnah*[1]; or that they had obtained collusive deductions; or upon *a general measurement of the pergunnah for the purpose of equalizing and correcting the assessment.*[2] This rule had no application to Behar, where rents in kind were usual (s. 60, cl. 2).—

10.—Time was to be allowed for the preparation and delivery of pottahs to ryots, and after the expiry of this time claims not supported by pottahs were to be nonsuited (s. 61).—

11.—Rules were laid down for the maintenance of patwaries and keeping proper zemindari accounts, and it was pointed out to zemindars and other actual proprietors that they could have no object in concealing the profits of

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[1] *i.e.* the pergunnah rate.

[2] This points very clearly to the revision of the nirkbundy or the making of a new nirkbundy at intervals; the instructed reader need not be reminded that periodical revision was part of Todar Mal's system and that decennial revisions were for a long time usual. Afterwards they became less regular, doubtless because *abwabs*, which were perhaps at first introduced in order to get more out of the ryots during the intervals between assessments, were found sufficiently efficacious without the trouble of a measurement and assessment. Further, the re-assessment papers went up to head-quarters, while the *abwabs* were designedly kept uncertain and intricate for the benefit of the underlings. The object of a measurement and assessment was of course an increase of the *asul* by raising the nirkbundy or pergunnah rate. As soon as the *asul* was increased, the *abwabs* were clapped on as before, only they came to more than before, as the *asul* was more and the *abwabs* were calculated in proportion to the *asul*. This easily explains the horror, I may say the traditional horror, with which up to this hour the ryot regards a measurement and assessment. The pergunnah rates doubtless became obsolete after the Permanent Settlement, because Government had no further occasion to make a measurement and revision of the assessment, while the zemindars were too apathetic, or probably because they found the plan of *abwabs* much less troublesome. Some people talk of pergunnah rates as if they remained fixed for ever, and were some quantity, determinate in the nature of things, which could be discovered by swinging a pendulum *in vacuo*.

their estates, as they were not to be subjected to any increase of revenue (s. 62).[1]—

12.—All persons receiving rent were to give receipts to dependent talookdars, under-farmers, ryots and others for all sums paid by them and a receipt in full on the complete discharge of every obligation (s. 63, cl. 1).—

13.—The rents of ryots, who absconded on account of inundation, drought or other calamity, were not to be demanded from those who remained (s. 63, cl. 2).—

14.—The instalments of rent payable by the under-renters and ryots were to be regulated according to the time of reaping and selling the produce (s. 64).—

These are the "restrictions" "prescribed" by Regulation VIII; and to these we must add a further very important restriction prescribed by Regulation XLIV, which was passed on the same day as Regulation VIII, the 1st May 1793. This restriction was that no proprietor should fix the jumma of any talook for a term exceeding ten years, or let any lands in farm, or grant pottahs to ryots or other persons for the cultivation of lands for a term exceeding ten years.

Pottahs not to be granted to ryots for a term exceeding ten years.

Subject to the above restrictions, proprietors were authorized in 1793 to let, in whatever manner they thought proper, such lands as were not at that time in the possession of dependent talookdars, mokurraridars and istemrardars; and that this letting meant and included letting to ryots for the purposes of cultivation, there can be no doubt, as otherwise restrictions 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, and 14 would have had no application. The term "let" was not a very appropriate expression to use in

Letting included letting to ryots for the purposes of cultivation.

[1] In vain, however, for they had no confidence in our faith or in the stability of our newly created power: and, once *abwabs* became common, they dared not show their accounts, which would have convicted them and made them liable to the penalties provided for *abwabs* imposed contrary to law.

respect of *khoodkasht* ryots, who were at the time upon the land and to whom it was merely intended to give pottahs specifically setting forth the exact amount of rent payable by them. Those who drafted the Regulation of 1793 were not however lawyers: and, as the zemindars had been created proprietors, it was natural that the draughtsman should speak of them "letting" their lands, although, when we read together the whole of the Regulations on the same subject passed on the same day, it is clear that it was not intended to use this term in its legal sense, and that the "letting" meant was very different from a demise of land by an absolute owner to a stranger who has no rights except those created by the demise.

What was the intention of the Legislature of 1793 as to the enhancement of the rent of ryots is a point upon which contradictory opinions have been formed and expressed. It has been contended that the Authors of the Permanent Settlement undoubtedly intended to leave the ryots wholly at the mercy of the newly created proprietors in this matter. It has been maintained with no less confidence that there is the clearest intention that the rent of the ryot should never be enhanced beyond the pergunnah rates of 1793: and that not only the ryots, who were then on the land, but those who afterwards came upon it, were and are entitled to fixity of tenure at that rate, as much as and a good deal more than the zemindars are entitled to hold their estates at the revenue assessed at the Decennial Settlement. Then again a third authority has been unable to discover any intention, and has remarked upon "the singular omission" of all provision on the subject. In making a fresh endeavour to discover this intention, which is either missing, as one view supposes, or has been misrepresented by one of the two other views, I propose to govern myself by those rules of construction which the experience of jurists has proved to be safe and reliable, and without the scientific guidance of which it is as difficult to track one's way amid the voluminous papers connected with the subject, as it

Contrary opinions about the intention of the Legislature of 1793 as to enhancement of ryots' rents.

The intention of the Legislature is to be sought in the language in which it has itself clothed that intention.

is for a mariner to find his course on the ocean without a compass. *Optima statuti interpretatio est (omnibus particulis ejusdem inspectis) ipsum statutum; injustum est, nisi totâ lege inspectâ, una aliqua ejus particulis proposita judicare vel respondere.* I shall examine the language which the Legislature has chosen for the final expression of its commands. If from that language I can discover its intention beyond reasonable doubt, if in the Regulations of 1793, as finally modified and amended and promulgated, I find a clear purpose with respect to this question of enhancement, I shall refuse to look at anything that has been said or written or proposed or discussed before these Regulations were passed, even though it was said or written or proposed or discussed by the members of the Legislature itself. I shall assume that, whatever different views any individual member may have had at any time previously, the view, which is to be found in that document which embodies the result of their deliberations, is the view which he either finally adopted as his own, or agreed should be binding on him as the view of the majority.[1] Much more will I refuse to look at anything that has been said or written or thought or opined either before the Permanent Settlement or a quarter of a century after it.

The Regulations which compose the Code of 1793 were the original rules of the Decennial Settlement, deliberately modified and carefully amended after much discussion. We know that an individual member of the Legislature, which passed that Code, at one time thought that the rents payable by the ryots, as well as the revenue payable by the zemindars, should be fixed for ever. But this is no evidence whatever of the final and considered resolution of the

[1] Even in America, where the rigorous common sense of the Judges refuses to be fettered by mere technical rules, it has been repeatedly held that the Journals of the House of Representatives are not evidence of the meaning of a statute "because this must be ascertained from the language of the Act itself, and the facts connected with the subject on which it is to operate." Some English Judges have allowed their minds to be influenced by what occurred in Parliament during the debates on the bill, but only where a clear intention is not to be gathered from the contents of the statute itself.

Legislature on this point, unless we can discover this intention in the language in which the Legislature clothed the results of its deliberations. If we cannot in this language discover such an intention, it may very reasonably be argued that this is strong proof of its having been abandoned, if ever it was entertained. Certainly the mere fact of its having been entertained by one member of the Legislature is no evidence that it was accepted by all. The Code of 1793 contains no express direction that the rents of ryots should not be enhanced. No such intention is discoverable by any possible interpretation that can be put upon the language of the Code itself. I shall endeavour to show that there is on the contrary a clear intention that these rents should be enhanced; and that, while prohibiting under severe penalties an irregular mode of enhancement by *abwabs*, the Legislature contemplated enhancement by a method which was well understood in the country and by the people of the country, and which had actually been put into practice by the English Revenue Authorities of that day in order to obtain, under the order of the Court of Directors, the information necessary for the settlements which preceded the Decennial Settlement. The revenue payable to the Government had always consisted of a definite proportion of the produce. This proportion varied according to the nature of the crop, and was originally paid in kind. In or about 1582 A.D., Raja Todar Mal, acting under instructions from the enlightened Akbar, made a settlement of the Subah of Bengal under rules which received such legislative sanction as was consistent with the nature of a despotic Government. All historians agree that the result of that settlement was satisfactory to the Government and beneficial to the ryots, whose descendants long cherished the memory of its fairness and justice. Let us see how this settlement was managed. First a *measurement of the land* was made, and this with one uniform standard instead of the various measures previously in use, varying in length with the consciences of those who collected the revenue. The next step was to ascertain the produce of each

No intention in the Code of 1793 that ryots' rents should be fixed for ever.

Todar Mal's settlement. A.D. 1582.

Modus operandi. A measurement and assessment.

bigha, and fix the proportion payable to Government. The land was divided into three classes according to its powers of production. The quantity of each kind of produce yielded by a *bigha* of each class was then ascertained, an average of the three was taken and the Government demand was fixed at one-third of this average. This was the full rate; but a deduction from this rate was made upon lands that suffered from inundation or drought, or that had to be left fallow from time to time. In fact the settlement entered into all those uncertainties and vicissitudes which make such a difference between the crops obtainable from different lands. The Government share being thus determined, Todar Mal next laid down rules for commuting the value of this share into a money payment. The prices current for the previous nineteen years were obtained from each village, and the value of the Government share was calculated upon the average of these prices. The settlement was at first made annually, but this was found inconvenient to Government and vexatious to the ryots: and settlements then came to be made for ten years on an average of the preceding decennial period, the rules for commutation being also revised according to the market rates. This was the process of a *measurement and assessment* with which the people of the country were thoroughly familiar. This process contained in itself the whole of the enhancement law which we have embodied in our formulæ. The State benefited by a rise in prices, for the rules of commutation were decennially re-adjusted according to the altered market rates. This was enhancement on the ground of the value of the produce having increased. Then, if the land became more fertile and produced better crops, the share of the State was larger, and the commuted money value more. This was enhancement on the ground of the productive powers of the soil having been increased, only no exemption was made when this was due to the agency of the ryot. The periodical measurement secured enhancement for excess land. The table of rates or *nirkbundy*, calculated upon the above data at each assessment,

This contained all the modern principles of enhancement.

contained the pergunnah rates for the time being, made out for each kind of land, and a ryot holding land of any particular class at less than the proper rate could be made to pay the full rate. This was enhancement on the ground of the rent being less than the prevailing rate paid by ryots of the same class for land with similar advantages in the places adjacent.

This mode of assessing and collecting the revenue continued for about a century, during which time zemindars and others were gradually introduced between the Government and the ryots. Jafier Khan, who died in 1725, introduced the first *subahdari abwab*, namely, *khas navisi*, or a trifling fee to the *khalsa* officers. His son-in-law and successor, Sujah-ud-din, introduced four *subahdari abwabs*. Aliverdi Khan succeeded him and added three more. I have elsewhere described how these *abwabs* were calculated. Each *abwab* was so much, say an anna or two pice in each rupee of the ryot's *asul* or total rent, calculated by the nirkbundy of the last assessment. Here then was a ready method of increasing the revenue without the trouble of a measurement and assessment and calculation of rates and tables of commutation: and it soon superseded these more laborious processes. The first *abwabs* were *subahdari*, *i.e.* the proceeds of them went into the pocket of the Subahdar or Viceroy of the Emperor: but as zemindars and farmers increased between the officers of Government and the ryots, and the collection of the revenue fell into the hands of these middlemen, they too imposed their own private *abwabs*. Mr. Shore, in his minute of the 18th June 1789, says that the impositions of Jafier Khan, Sujah and Aliverdi amounted to an increase of about 33 per cent. upon the assessment of 1658, while the increase of the zemindars' exactions from the ryots could not be less than 50 per cent. Every zemindar, talookdar, farmer and under-farmer had his own set of abwabs, and the ryots had to pay them all. No wonder that in 1793 they had become, in the language of the Regulation, "from their number and uncertainty intricate to adjust, and a source of oppression to the

Introduction of *abwabs*.

Their mischievous results.

ryots." The Legislature therefore determined to put an end to this system of abwabs; and that every ryot's rent should be a specific sum, and not an *asul* plus one anna in the rupee for one abwab, plus two pice in the rupee for a second abwab, plus nine pie in the rupee for a third abwab, plus so many gundahs for a fourth, and so on.[1]

This mode of enhancement by abwabs, apart from the oppression that was practised under cover of it, was exceedingly unfair in that it took no account of those differences of soil and vicissitudes of season, a due regard for which made Todar Mal's system so acceptable. The abwabs that were in existence in 1793, if they were more than, were also a substitution for, the increase of jumma which would have resulted from the periodical measurements and assessments under Todar Mal's system, had they been made. The ryots too had become accustomed to their payment. There was therefore a certain rough justice in allowing them to be amalgamated with the old *asul* into a specific sum which was to be the rent—a new *asul* in fact, only not obtained by a measurement and assessment. The prohibition of new abwabs was of course intended to prevent the creation of the same mischief over again in a more formidable shape, as any new abwabs would be calculated on this new *asul*. The object of Government was to put an end to arbitrary exaction by making the amount of demand certain,[2] to abolish (should the form of expression be preferred) enhancement by abwabs; but to abolish a particular mode of enhancement, which had been found to be the source of

Object of the British Government in abolishing abwabs.

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[1] Sometimes the second abwab was calculated on the *asul* plus the first abwab—the third on the *asul* plus the first two, and so on. With these intricate calculations the ignorant ryots were wholly in the hands of the amlah and never knew what they owed.

[2] Read Regulation VIII of 1793, s. 52, "every engagement.....shall be specific as to the amount"—s. 54, "one specific sum"—s. 57, "rents to be paid by the ryots.....shall be specifically stated"—"pottah shall contain the exact sum"—Regulation XXVII of 1803, s. 53, cl. 11 "pottahs to ryots...specifying the amount they are to pay." Lord Cornwallis in his minute of the 3rd February 1790 wrote:—"Neither is prohibiting the landholder to impose new abwahs or taxes on the lands in cultivation tantamount to saying to him that he shall not raise the rents of his estates."

much oppression, is very different from abolishing enhancement altogether.

Regulation VIII of 1793 contains, as we have seen, specific provisions protecting certain mokurraridars and istemrardars and dependent talookdars from increase of jumma or enhancement under certain circumstances. If there were any general rule, or a general intention discoverable, that all persons holding under proprietors should be exempt from enhancement, there would have been no occasion for these special provisions. According to the ordinary rule of construction, the enactment of special provisions, exempting certain classes of tenures from enhancement under certain circumstances, supposes the existence of a rule of enhancement applicable to tenures generally. Dependent talookdars are even declared liable to increase of jumma in certain cases. Then proprietors are declared entitled to let their remaining lands, under the prescribed restrictions in whatever manner they may think proper, and this, as we have seen, includes "letting" to ryots. We have examined the prescribed restrictions, and we have seen that not one of them implies or includes an absolute prohibition against enhancement, while one of them, to which I shall now more especially advert, recognizes the process of measurement and assessment, which, as we have seen, includes every rule of enhancement embodied in Act X of 1859. Clause 2 of section 60 is as follows:—

Regulation VIII of 1793 distinctly recognizes enhancement by measurement and assessment.

"No actual proprietor of land, or farmer, or persons acting under their authority shall cancel the pottahs of the *khoodkasht* ryots except upon proof that they have been obtained by collusion; or that the rents paid by them within the last three years have been reduced below the rate of the nirkbundy of the pergunnah; or that they have obtained collusive deductions; or upon a *general measurement of the pergunnah for the purpose of equalizing and correcting the assessment.*" It is clear from these provisions that the pottahs of ryots other than khoodkasht ryots could be cancelled, and that such other ryots had no protection whatever from enhancement, while the khoodkasht ryots were protected from enhancement

beyond the pergunnah rate (that is, the nirkbundy made at the last measurement and assessment), until a new measurement and assessment were made, and a higher rate established as the result. Looking back from this distance of time, it is impossible to help regretting that the Legislature, instead of assuming this process to be ordinary and usual, did not expressly declare that proprietors were entitled to make a measurement and assessment for the purpose of correcting the pergunnah rates, at the same time laying down some rules as to the mode in which the process was to be conducted and the periods within which it might be repeated. It may however well be that the thing was so familiar to every one at the time, that the necessity for such rules occurred to no one.

Preamble to Regulation XLIV of 1793.

The Preamble of Regulation XLIV of 1793, speaking of arrangements by which lands were let in talook or farm, or for cultivation at a reduced rent for a long term or in perpetuity, says that such engagements would "be repugnant to the ancient and established usage of the country, according to which the dues of Government from the lands (which consist of a certain proportion of the annual produce of every bigha of land, demandable according to the local custom in money or in kind, unless Government has transferred its right to such proportion to individuals for a term or in perpetuity, or fixed the public demand upon the whole estate of a proprietor of land, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, so long as he continues to discharge the latter), are unalienable without its express sanction." Let us try and put ourselves in the position of the Legislators of 1793, who on more occasions[1] than one expressed their conception of the *then* state of things in the language adopted in the recital contained in the above parenthesis. They believed the ancient and

Dues demandable from ryots were, by the common law of the country, a certain proportion of the annual produce of each bigha.

[1] A similar recital in almost the same words is to be found in the preamble to Regulation XIX of 1793, and in other Regulations. In the case of *Forbes v. Mir Mahomed Hosein* (12 B. L. R 215) the Privy Council referred (in 1873) to "the principle that every *bigha* of land is bound to pay and contribute to the public revenue, unless it can be brought within certain known and specified exceptions."

established[1] usage of the country to be that the Government dues consisted of a certain proportion of the annual produce of every bigha of land. They believed that these dues were leviable according to the local custom, either in money (as in Bengal), or in kind (as in Behar). They speak of Government transferring its right to such proportion to individuals, for a term (as by jaghire and other grants), or in perpetuity *scilicet* by *lakheraj* grants, as to which they were legislating by other Regulations of the same date as Regulation XLIV. Then they further speak of Government fixing the public demand upon the whole estate of a proprietor, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public so long as he continues to discharge the latter—and it does not require much reading of the Regulations of 1793 to understand that they were here alluding to the Permanent Settlement which on that very date became a *fait accompli*. There is not the slightest indication of an intention to alter the ancient and "established" usage of the country. The whole of the language employed contemplates this usage as subsisting and continuing. Up to this moment a certain proportion of the annual produce of every bigha is delivered in kind in Behar; and no attempt has ever been made to set aside or alter this custom. A direct result of this mode of realizing rent is that the zemindar gets all that the most rigorous enhancement law could give him—he gets the full benefit of measurement, of rise in prices, of increase in the productive powers in the land. So long as this custom lasts in Behar, no enhancement law is required for that province. In Bengal the custom was that the proportion of the annual produce of each bigha should be demandable in money. There is not a syllable in the Regulations of 1793 to show that it was intended to interfere with this custom any more than with the custom of payment in kind in Behar—there is not a

This rule was not altered by the Code of 1793.

[1] *i.e.* "established at the time Legislature was speaking"—a very common use of the term in the Regulations.

syllable in the Regulations or Acts from 1793 down to date, which interferes with, alters, or sets it aside; and so far as the Legislature is concerned, it has remained intact. If the money rents payable in 1793 had been then fixed for ever, any enhancement would have been rendered impossible in one province, while every enhancement was left possible in the other. Mr. Shore's and Lord Cornwallis's Minutes show ability that could not have overlooked the absurdity and injustice of a measure of this kind.

Dues payable by ryots in Bengal were a certain proportion of the produce of every bigha demandable in money.

If then the dues payable by the ryots in Bengal were in 1793 a *certain proportion of the annual produce of every bigha demandable in money*, there must of necessity have been rules, customs, usages by which (1) the proportion of the annual produce demandable was regulated; and (2) the value of this proportion was commuted into money. We learn from many sources of information that the proportion varied according to the crop cultivated, the quality of the land, its proximity to the village, facilities of irrigation and many other qualifying circumstances. Then the rules for commutation must have varied with prices, proximity of markets, means of carriage, vicissitudes of season and many other causes mediately or immediately affecting them. All these rules must have varied from district to district, from pergunnah to pergunnah, from estate to estate, from village to village. Unless the Legislature was prepared to perpetrate the injustice of laying down one rule for universal application, or to undergo the labour and expense of making a complete record of these rules or usages—a plan which a quarter of a century later was considered advisable—there was but one further expedient, namely, to allow the parties concerned to prove these rules or usages, when they came into question: and this expedient was adopted. Accordingly it was enacted by Regulation VII of 1799, section 15, clause 8, that the Courts of Justice should determine the rights of every description of landholder and tenant, when regularly brought before them, whether the same were ascertainable by written engagements, or defined by the laws and Regulations,

A variety of usages regulating the proportion and its money value.

Legislature left those concerned to prove these usages.

or depended upon "general or local usage proved to have existed from time immemorial." Courts of Justice were a new creation in those days; forms of procedure and rules of evidence were little understood, and with reference to what I have said above (*ante* p. 163) I doubt if the most skilful solicitor, who ever prepared a brief, could have at the time discovered materials to prove a usage that had existed from time immemorial. It is not to be wondered at that little came of this provision, more especially as it was followed in the next line by an explanation that no part of the then "existing Regulations was meant to deprive the zemindars and other landholders of the power of summoning, and, if necessary, compelling the attendance of their tenants for the adjustment of their rents or for any other just purpose." In vain the Courts sat waiting for evidence of general and local usage, while the zemindars compelled the attendance of their tenants and adjusted their rents on their own principles. In 1822, when legislating for another part of the country, it was considered advisable to send Settlement Officers out to search for those usages, which were so shy of the precincts of the courts.

But the proof was not brought.

Regulation VII of 1799, section 15, clause 7, speaks of lease-holders or other tenants "having a right of occupancy only so long as a certain rent, or a *rent determinable on certain principles according to local rates and usages* be paid." Regulation VIII of 1793, section 57, clause 1, speaks of the rents to be paid by the ryots, *by whatever rule or custom they may be regulated.*" Regulation XI of 1822, section 33, speaks of the title of ryots to hold their land subject to the payment of fixed rents or *rents determinable by fixed rates, according to the law and usage of the country.*" If these expressions are read in the light afforded by understanding the process of a measurement and assessment by which a certain proportion of the annual produce was converted into a money rate, they are readily intelligible. Though they have been often referred to, I am not aware that they have ever been explained in a satisfactory way or by a method that derives the meaning from its source.

Certain passages in the Regulations readily explainable by the process of a measurement and assessment.

Pergunnah rates regarded as known quantities at the time of the Permanent Settlement.

There are many passages in the Regulations of 1793 which show that the Legislature was then very sanguine that zemindars and ryots would readily adjust their rents amongst themselves, and that their arrangements would with much facility assume the form of written contracts. The pergunnah rates were evidently considered to be settled and known, and so, no doubt, they were represented to the officers entrusted with the duty of collecting the data for the Permanent Settlement. The result of this feeling as to the authenticity of the pergunnah rates was that it never occurred to the Legislature to make any provision in 1793 for cases in which zemindars and ryots did not agree about these rates, when they came to make up the rent that should be inserted in the pottahs. The experience of less than a year appears to have shown the necessity for some such provision, for Regulation IV of 1794, passed on the 27th March 1794, enacted (s. 6) that in case of a dispute arising between the parties regarding the rates, whether the rent were payable in money or kind,[1] it should be determined in the Civil Court according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute had arisen.

Provision made in 1794 for dealing with disputes as to rates.

Provision for the renewal of the ten years' pottahs.

The first pottahs were for ten years. It did not occur to the Legislature in 1793 to provide as to what should be done when they expired. This omission also was supplied in the following year, and in the same Regulation (IV of 1794), section 7 of which enacted that no proprietor or farmer of land, or any other person should require ryots, whose pottahs had expired or become cancelled under Regulation XLIV of 1793, to take out new pottahs at higher *rates* than the established *rates* of the pergunnah for lands of the same quality and description, but that ryots[2] should be entitled to have such pottahs

[1] From this it might appear that the *rates* were the different proportions of the various crops grown on land of different qualities.

[2] The term "ryots" used thus generally might seem to imply that *all ryots* were entitled to have their pottahs renewed at the established *rates*. But this general sense is restrained by the words that immediately follow—viz.—" in the same manner as they were entitled to demand pottahs in the first instance." Only the *khoodkasht* ryots could

renewed at the established *rates*, upon making application for that purpose to the person by whom their pottahs were to be granted, in the same manner as they were entitled to demand pottahs in the first instance. It is not easy to conceive that all this is a mere periphrase, meaning nothing more than that the ryots were entitled to have their pottahs renewed at the same, or the old, rent. The term used is "rate," not rent—and when the rate was a money rate, it might have been revised by a measurement and assessment in the interval between 1793 and 1803. The established rates of 1793, *i.e.*, rates obtained by the last measurement and assessment made before 1793 and "established" until revised and altered by a fresh measurement and assessment—and the established rates of 1803, might therefore be very different. If it were intended that the pottahs should be renewed in 1803 at the old rent; or that, supposing the quantity of land to have become less or more, the rent was still to be calculated at the rates of 1793, the above language could not have been chosen to express this intention.

As I read the Regulations of 1793—and I speak with extreme deference to the able and earnest men who have preceded me in the task of construction—it appears clear to my mind that the Government and the Legislature of 1793, while determined to put an end to *enhancement by abwabs*, recognized, and had no intention of interfering with that enhancement of money rents, which would easily and naturally have resulted from periodically converting a certain proportion of the annual produce into a money rent by the well known process of a measurement and assessment. If this be a correct view, and the zemindars, instead of following the legitimate course thus left open to them, followed the course closed and forbidden by the law, obtaining enhanced rent by the imposition of abwabs, there is much ground for saying that their own course of conduct has landed them in their present difficulties. If

Conclusion as to the state in which the law of enhancement was left by the Regulations of 1793.

claim not to have their pottahs cancelled, if they were paying the full rates according to the nirkbundy.

this observation is justly made, it may be well also to remember that men, who ask relief from a position of difficulty in which they have placed themselves, cannot claim to prescribe the conditions on which that relief shall be afforded.

According to the Regulations of 1793 no pottah could be granted to a ryot for a longer term than ten years. The object of this limitation was to prevent the Government revenue suffering from a diminution of the resources of the zemindar, which would have been the result of granting pottahs on a long term or in perpetuity at a low rent on receipt of a *salâmi* or fine. It was subsequently considered that this mischief could sufficiently be prevented by making pottahs voidable upon a sale of the estate for arrears of revenue; and accordingly the ten years' limit was abolished in 1812 by Regulation V of that year, section 2 of which enacted that proprietors should be competent to grant leases for any period which they might deem most convenient to themselves and tenants, and most conducive to the improvement of their estates. It was at the same time and by the same Regulation declared unnecessary that pottahs should be in any particular form, and proprietors were allowed to grant pottahs to their ryots according to such form as the contracting parties deemed most convenient and most conducive to their respective interests, but it was carefully provided that nothing in this change of the law was to legalize the imposition of *abwabs*, and that any stipulation for such would be null and void. It may be observed that the provisions of Regulation V of 1812 apply only to cases of contract,[2] which the Legislature was apparently still sanguine would come to regulate matters between zemindars and ryots: that no provision was made as to the term for which a ryot was entitled to demand a pottah, and that the

Ten years' limitation abolished in 1812, and proprietors declared competent to grant leases for any term.

[2] It did not in 1812 occur to the Legislature to validate leases granted for more than ten years, while section 2, Reg. XLIV of 1793 was in force, and therefore invalid under its provisions. This was, however, done afterwards by s. 2, Reg. VIII of 1819 as regarded "enures." Did "tenures" include ryots' holdings?

provisions of section 7 of Regulation IV of 1794 as to the renewal of pottahs were not applicable to pottahs granted under Regulation V of 1812.

Theory of the Sale Laws.

If the proprietor of an estate reduced his own receipts of rent by granting leases at a reduced rent to tenure-holders or ryots, the very probable consequence would be that he would be unable to pay his own revenue. To prevent this mischief going further, the Legislature enacted that, when an estate was sold for arrears of its own revenue, all incumbrances should be avoided, all leases cancelled (*i.e.* if the purchaser so desired[3]), and the estate handed over to the new proprietor in the same condition in which it was at the time of the Permanent Settlement. Section 5 of Regulation XLIV of 1793 enacted that upon a sale for arrears of revenue all engagements with dependent talookdars, all leases to under-farmers and pottahs to ryots should stand cancelled from the day of sale, and the purchaser should be at liberty to collect from the dependent talookdars and ryots whatever the former proprietor would have been entitled to demand according to the established usages and rates of the pergunnah or district, had the cancelled engagements never existed. The only exceptions made to this general rule were—(1) the dependent talookdars exempted from enhancement at the Decennial Settlement under clause 1, section 51, Regulation VIII of 1793; (2) leases for the erection of dwelling-houses, manufactories, gardens, or other purposes. The rule applied to all ryots indiscriminately. According to the construction put upon the section by the Privy Council[3] the engagements referred to did not become *ipso facto* void upon the sale taking place, but the power expressly and affirmatively given to the purchaser supposed the talookdars and ryots to remain in all respects as before, except that they became liable to a certain limited increase of rent "according to the established usages and rates of the pergunnah or district," which words, it was observed, in

Reg. XLIV of 1793, sections 5, 7, and 8.

Construction by the Privy Council.

[3] *Ram Surnamayi* v. *Maharajah Satish Chandra, Rai Bahadur*, 10 Moo. In Ap 123.

themselves showed that the section was directed to cases in which grants had been made with *reservations of rent below those usages and rates*—was aimed not at the destruction of the tenure, but at the increase of rent under certain specified and equitable limitations. It may be observed that the above provisions of Regulation XLIV of 1793 were not expressly repealed until 1871.

Regulation XLIV of 1793 contained no provision as to the course to be followed, if the dependent talookdars and ryots refused to pay according to the established usages and rates of the pergunnah or district. This was subsequently provided for by clause 5 of section 29 of Regulation VII of 1799 which enacted as follows:—"The purchaser may, without any previous application to the adálat, eject any of the under-renters whose leases are annulled by section 5 of Regulation XLIV of 1793, and who may decline the renewal of them on such terms as the purchaser by the above Regulation and section 7[4] of Regulation IV of 1794 is authorized to require from them: though it is hereby declared, in explanation of section 5 of Regulation XLIV of 1794, that it is not meant to annul the leases or in anywise affect the tenures of the istemrardars or tenants at a fixed rent described in section 19 of Regulation VIII of 1793 who, by section 49 of that Regulation, were exempted from any increase of their fixed jumma at the formation of the Decennial Settlement, provided they had held their tenures at a fixed rent for more than twelve years antecedent to that period. On the contrary, such under-tenants, being declared in section 19 of Regulation VIII of 1793 a species of pottah talookdars, were meant to be included in section 7 of Regulation XLIV of 1793, which exempts from any increase of rent under that Regulation the lands of dependent talookdars who were exempted from any increase of assessment at the formation of the Decennial Settlement, and declares the revenue payable by such talookdars fixed for

Reg. VII of 1799, section 29, cl. 5. Eviction of "under-renters," who declined to pay according to the established usages and rates of the pergunnah or district.

[4] Which entitled ryots to renewed pottahs at rates not higher than the established rates of the pergunnah for lands of the same quality and description—*see* above, p. 206.

ever." The *istemrardars* here referred to were not ryots. The whole passage concerned with them shows that the Legislature regarded an increase of jumma as a natural result of the renewal of pottahs under section 7 of Regulation IV of 1794, and were in consequence careful to protect these *istemrardars* against such an increase. The state of things at the commencement of this century was then as follows—Enhancement by *abwabs* was strictly prohibited, but the well-known mode of proceeding by a measurement and assessment was left intact, and this afforded a way of enhancement fair to the ryots and, when pursued in the spirit that characterized Toder Mal's settlement, acceptable to them. The Legislature had, moreover, opened out the way of contract. Where rent was paid in kind, the pergunnah rates must have been the proportions of different crops, varying with different lands according to quality of soil, necessity for fallow, advantages of position and other similar circumstances. Where rent was paid in money, these rates had to be commuted into money rates according to market prices upon an average of a certain number of years. Once the commutation was effected, these money rates were the pergunnah rates until the next measurement and assessment. No class of ryots had a legal right to pay less than the pergunnah rates. If a proprietor, on receipt of a *saldmi* or otherwise, chose to let land at less than the pergunnah rates, the contract was binding on the parties thereto; but, if the estate came to be sold for arrears of revenue, this contract had no force against the auction-purchaser, who was entitled, if he so wished, to collect rent from the ryot at the full pergunnah rates, and evict him, without reference to any Court, if he refused to pay it.

State of things at the beginning of the century.

Before proceeding with an examination of the Sale Laws, it will throw additional light upon the subject to advert to the legislation upon the subject of kanungoes and patwaries. One of the duties imposed on proprietors by Regulation VIII of 1793 was the maintenance of patwaries; and the patwaries in every estate were to keep accounts

Duties of kanungoes and patwaries intimately connected with this measurement and assessment.

Reg. VIII of 1793, s. 62, cl. 3.

relating to the lands, *produce*, collections, and charges. It may be said that the object of keeping accounts of *produce* was that they might be produced before the Collector to enable him to make the allotment of the public revenue, in the case of sale or division of estates, according to the principles laid down in Regulation I of 1793, which require the assessment upon each lot to be fixed at an amount which shall bear the same proportion to its *actual produce* as the fixed assessment upon the whole of the lands bears to the whole of the *actual produce*. This was not so, however, for these words "actual produce" are defined by section 8 of Regulation I of 1801 to mean the net annual rent (*i.e.* where rent was payable in money), or other net produce (*i.e.* where rent was payable in kind) receivable by the proprietor after deducting from the gross rent or other gross produce the expenses of collection and management. Clearly then, so far as concerned those parts of the country where rent was payable in money, there was no use in keeping an account of the produce for the assessment of the revenue; and the natural conclusion is that it was kept for the purpose of assessing the rent. It may be observed in support of this view that section 62 of Regulation VIII of 1793 expressly states that the rules prescribed regarding patwaries were framed solely to *facilitate the decision of suits in the Courts of Judicature between proprietors and farmers of lands and persons paying rent or revenue to them*, and to guard against any diminution of the fixed revenue or injustice to individuals by enabling the Collectors to procure the necessary information and accounts for allotting the public jumma upon estates that may be divided, agreeably to the principles prescribed in Regulation I of 1793. We have here two objects[5] proposed in the appointment of patwaries. If the keeping of accounts of the produce was not necessary for one of these two objects, it must have been intended to effectuate the other.

[5] The same two objects are stated in section 1 of Regulation XII of 1817, which speaks of the difficulties and delays experienced in the investigation of summary and other suits for rents in consequence of the Regulations regarding patwaries being defective.

This view is further confirmed by section 16 of Regulation XII of 1817, passed originally for Behar, Benares, and Cuttack, but extended to all Bengal districts by Regulation I of 1819. The patwari is by this section required to deliver to the kanungo of the pergunnah at the expiration of every six months a complete copy of *accounts showing distinctly the produce of the khurreef and rubbee harvests.* Then let us examine the duties of the kanungo. He was required by section 7 of Regulation IV of 1808—to compile information regarding . . . *articles of produce, rates of rents,* rules and customs established in each pergunnah . . . . to assist at all *admeasurements of land,* whether undertaken by the officers of Government in conformity to the Regulations, or *by the landholders or ryots,* and to record the same. The same provisions are found in Regulation V of 1816, which were extended to the Bengal districts by Regulation I of 1819. In all probability one of the greatest causes of the offices of kanungo and patwari falling into desuetude in Bengal was that they were no longer called upon to perform the above essential duties, the zemindars, strengthened by the *Haftam* Regulation, having matters their own way and preferring enhancement by *abwabs* to measurement and assessment, which involved so much more trouble and expense, and created inconvenient records, the production of which the officers of Government were armed with plenary powers to compel.

Section 16 of Reg. XII of 1817: extended by Reg. I of 1819.

Regs. IV of 1808: V of 1816: and I of 1819.

Such pergunnah rates as were in existence at the time of the Permanent Settlement were doubtless prepared for the Government officers, who were charged with the duty of collecting the data for the Decennial Settlement. Old and reliable records, if any such existed, were doubtless destroyed or put out of the way. New measurements and assessments were, as a rule, seldom undertaken after the Permanent Settlement, and the natural result was that the pergunnah rates soon died out or became undiscoverable. Mr. Colebrooke writing on the 1st May 1812—not twenty years after the Permanent Settlement—after mentioning a case in which "no rule

Vanishing and insensible nature of pergunnah rates.

Mr. Colebrooke's review of the position in 1812.

of adjustment could be discovered after the most patient enquiry conducted by a very intelligent public officer," says:—"The position, as a general one, is unquestionably true, that there is actually no sufficient evidence of the rates and usages of pergunnahs, which can be now appealed to for the decision of questions between landholders and ryots. I apprehend that, when the Regulations in question were framed, no very distinct notions were formed of the pergunnah rates and established usages referred to. At least it is evident that several passages in the Regulations, where reference is made to such rates and usages, were not exactly applicable to the state of things which then existed. Possibly it may have been owing to caution, suggested by feelings of doubt on that subject, that the Regulations everywhere look to the Courts of Justice for the determination of all disputes between landlord and tenant, without providing definite rules for the Courts' guidance; while, on the other hand, the Courts of Justice have in general, and of late years especially, looked to the Regulations alone for rules of decision without entering into tedious and possibly vain researches into local usages. . . . . If it be thought expedient, in place of abrogating the laws which were enacted for the protection of the tenantry, and especially of the *khoodkasht* ryot or resident cultivator, that the right of occupancy, which those laws were intended to uphold, should be still maintained, and that the ryot should be supported in his ancient and undoubted privilege of retaining the ground occupied by him so long as he pays the rent justly demandable for it, measures should rather be adopted, late as it now is, to reduce to writing a clear declaration and distinct record of the usages and rates, according to which the ryots of each pergunnah or district will be entitled to demand the renewal of their pottahs upon any occasion of general or partial cancelling of leases." This was not, however, done, and the pergunnah rates, which had been gradually growing shadowy and unsubstantial, at length vanished altogether, leaving so little trace behind, that some

incredulous lawyers have doubted their very existence, declaring that their origin and being, like that of Romulus and Remus, were purely mythical. "On the maturest deliberation upon this difficult and intricate subject," continues Mr. Colebrooke, "I am compelled, however reluctantly, to relinquish the idea of restoring a definite and certain standard, to which appeal may be made for determining the rights of persons having dependent and subordinate tenures under landholders-in-chief, and for settling the disputes and questions which arise between them. Abandoning this idea and apprehensive that an entire alteration of the provisions of existing laws, however inefficient, which suppose such a standard, may be productive of alarm at least, if not of serious and real evil to the tenantry of the country, by abridging privileges of which they yet have an imperfect enjoyment, I shall content myself with merely proposing that provision shall be made, by Regulation, for cases where the pergunnah rates are not ascertainable, which should regulate the pottahs of *khoodkasht* ryots or of other persons entitled to a renewal of their leases. This will silently substitute a new and definite rule in place of ancient but uncertain usages." Mr. Colebrooke's proposals were embodied in Regulation V of 1812, to which I now return.

Reg V of 1812, sections 5-8. Provision for cases in which no established pergunnah rates were known

The *fifth* section of this Regulation referring to section 5 of Regulation XLIV of 1793 and the corresponding provision for Benares and the Ceded Provinces, which authorize a purchaser at a revenue sale to collect according to the established usages and rates of the pergunnah, recited that there was reason to believe that the pergunnah rates are in many instances become very uncertain. Section 6 then enacted that, if *any known established pergunnah rates* existed, they were to determine the amount of the rent, which should be received by persons deputed to attach the lands on the part of Government or *by the purchasers at the public sales*. Section 7 enacted that where no established rates of the pergunnah or local division of the country were known, pottahs should be granted and the collections made

according to *the rate payable for land of a similar description in the places adjacent;* but, if the leases and pottahs of the tenants of an estate generally, which might consist of an entire village or other local division[6], were liable to be cancelled, new pottahs were to be granted and the collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of the three last years antecedent to the time at which the leases were cancelled. Section 8 enacted that a deduction of ten per cent. from the gross rent paid by the ryots should be made to dependent talookdars for their profit, this deduction to be exclusive of collection charges.

Mr. Colebrooke's rule applied only where there had been a sale of the estate for arrears of revenue:

It may be observed, in the first place, that Mr. Colebrooke's rule applied only where leases and pottahs were cancelled by a sale for arrears of revenue. It was not a general rule of enhancement available to all proprietors. We have no reports of that period, reporting having commenced only in 1845; but, if we had, they would probably show us that it was chiefly in estates sold for arrears of revenue that disputes came into Court, the defaulting proprietor supporting the ryots in opposing the new purchaser, as so commonly happens, and they gladly taking part with their old landlord from dread of their rents being enhanced by the new one. It was therefore for cases in which there had been a Revenue Sale that the want of a rule was felt: and the rule was limited to meet these cases. In estates not sold for arrears of revenue, the zemindar was powerful enough to manage his ryots without resort to the Courts. Mr. Colebrooke's rule, that the collections should be made *according to the rate payable for land of a similar description in the places adjacent,* is the origin of the first ground of enhancement in section 17 of Act X of 1859, viz —

was the origin of the first ground of enhancement in Act X of 1859:

> that the rate of rent paid by such ryot (*i.e.* a ryot having a right of occupancy) is below the prevailing

[6] These words show that the "places adjacent" were to be taken within the same "village or other local division."

:ate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

but was rendered useless by being made too precise.

The addition of the words "prevailing rate," "payable by the same class of ryots," and "with similar advantages," though adding considerable precision to Mr. Colebrooke's rule, destroyed its utility. The endeavours of the Legislature to introduce contract, the fact that ryots other than *khoodkasht* ryots were not protected, and the power of the zemindars derived from Regulation VII of 1799, must have in their combined action effected a considerable rise of rents, more or less commensurate with the progress of the country. It was clearly Mr. Colebrooke's intention that the auction-purchaser should enhance up to the level of this rise. The addition of the words "with similar advantages" was not very material, this being a usual element in the valuation; but the addition of the words "prevailing rate," *i.e.* the rate paid by the majority, greatly increased the difficulty of proof and diminished the area of application; and the words "payable by the same class of ryots" (soon interpreted to mean "ryots having a right of occupancy") rendered it impossible to use an outside rate or anything in the nature of a competition rate as a *fulcrum* to raise rents. In Mr. Colebrooke's rule the *fulcrum* is where it ought to be, under the lever—in Act X it has been moved beyond the lever's end.

Reg V of 1812, sections 9-10 Notice of enhancement first made necessary.

Section 9 of the same Regulation enacted that no cultivator or tenant of land should be liable to pay an enhanced rent, though subject to enhancement under subsisting Regulations, unless written engagements[7] for such enhanced rent had been entered into by the parties, or a *formal written notice* had been served on such cultivator or tenant at the season of cultivation, *i.e.*, in or before the month of Jeyt, notifying the specific rent, under the landholder's right of enhancing it, to which he was to be

[7] Contract was doubtless beginning to make its way for the Registry of Deeds was passed in the same year A new Regulation (XX of 1812)

subject for the ensuing year. Section 10 enacted that unless such notice were duly served, no greater rent was to be exigible by process of distress or confinement of person, nor recoverable in Court than the cultivator or tenant was bound to pay under his previous engagements; and, if more were levied from him, he was entitled to a refund of the excess with damages on proof of the circumstances before a Court of Justice.

For ten years from 1812 the purchaser of an estate at a sale for arrears of revenue was limited in his collections of rent by the twofold rule of pergunnah rates where discoverable; where not, the rate payable for land of a similar description in the places adjacent: and no class of ryots had been expressly exempted by the Legislature from the operation of the rule. We now come to Regulation XI of 1822 (which repealed clause 5 of section 29 of Regulation VII of 1799, explained section 9 of Regulation V of 1812, but left intact section 5 of Regulation XLIV of 1793). Section 29 of this Regulation laid down that the act of sale transfers to the purchaser all the property and privileges, which the engaging party possessed and exercised at the time of settlement, free from any accidents or incumbrances that might subsequently have been imposed, or have supervened thereupon, such as sale, gift, or other transfer, mortgage, marriage settlement, or other assignment or the like; and that, as the property and privileges aforesaid were perpetually hypothecated to Government for the revenue, no claim of right founded on any act of the original engager or his representative, or on any plea impeaching the title by which the said engager may have held, should be allowed to impugn the right of the Revenue Authorities to make the sale, or to bar or affect the title and interest conveyed to the purchaser by the sale. In pursuance of this principle, section 30 enacted that all tenures which had originated with the defaulter or his predecessors, being representatives or assignees of the original engager; as well as all agreements with ryots or the like, settled or credited by the first engager or his represent-

Reg. XI of 1822, sections 29, 30, 32, and 33. Enunciation of the effect of a revenue sale in a more definite form.

Tenures and agreements with ryots voidable by sale.

atives subsequently to the settlement; as well as all tenures which the first engager was under the conditions of his settlement competent to set aside, alter or renew—were liable to be avoided and annulled by the purchaser of the estate or *mahal* at the sale for arrears due on account of it, subject only to such conditions of renewal as attached to the tenure at the time of settlement. From the operation of this rule were excepted *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices therefor, or for gardens, tanks, canals, watercourses, or the like purposes, which leases or engagements were to continue in force and effect so long as the land was duly appropriated to these purposes and the stipulated rent paid.

Exceptions to the operation of this rule.

Section 32 enacted that these rules or any other rules contained in the then existing Regulations, by which persons were declared competent, under certain restrictions, to annul engagements contracted between former proprietors and their under-tenants, and in certain cases to enhance the rent payable by such tenants, should not be construed to entitle the purchasers of land at public sales to disturb the possession of any village zemindar, putteedar, mofussil talookdar, or other person having an hereditary transferable property in the land or in the rents thereof, not being one of the proprietors party to the engagement of settlement or his representative—nor was the rule to be construed to authorize a purchaser *to eject a khoodkasht kudeemee ryot or resident and hereditary cultivator having a prescriptive right of occupancy*—nor was a purchaser to demand a higher rate of rent from an under-tenant of either of these descriptions than was receivable by the former malguzar, saving and except in cases in which such under-tenants had held their land under engagements stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malguzars from the *old established rates* by special favour, or for a consideration, or the like; or in cases in which it might be proved that according

Reg. XI of 1822, section 32. Explanation of the rule in respect to *khoodkasht kudeemee ryots*.

to the custom of the pergunnah, mouzah, or other local division, such under-tenants were liable to be called upon for any new assessment or other demand not interdicted by the Regulations of Government. Section 33 declared that persons purchasing at public sales, who were desirous of enhancing the rents of their under-tenants, were still to be required, in the absence of specific engagements, to serve a formal notice of their intention, as prescribed in section 9 of Regulation V of 1812, but that nothing in this section was intended or was to be construed to affect the right of any individual possessing a transferable or hereditary right of occupancy to contest the justness of the demand so made, and to pay his rent as before until the contrary was decided by a competent Court of Justice: nor in any respect to annul or diminish the title of the ryots to hold their land subject to the payment of fixed rents, or rents determinable by fixed rates according to the law and usage of the country.

Notice of enhancement still required. Explanation of section 9 of Regulation V of 1812.

With respect to these two last sections (32 and 33), it is to be observed that they do not create *exceptions* to the general rule contained in the preceding sections, but *construe* and *explain* the *then* existing law, assuming that the ryots always had the rights referred to. Section 32 speaks of two descriptions of under-tenants, viz.—(1) village zemindars, putteedars, mofussil talookdars or other persons having an hereditary transferable property in the land, or in the rents thereof; and (2) *khoodkasht kudeemee ryots, or resident and hereditary cultivators having a prescriptive right of occupancy.* We are concerned only with the second description. The term "*khoodkasht kudeemee* ryot" is not defined in the Regulation further than by the words which above accompany it: but it was construed to mean *khoodkasht* ryots who had been in possession of their lands for more than twelve years before the settlement.[8] Mr. Justice Trevor says that the use of this term in section 32 "to designate the cultivators, who would not be liable to eviction on a sale for arrears of revenue, gave rise to the doctrine that *khoodkasht* ryots, who had their

These sections are explanatory of the law—do not create an exception.

Who were *khoodkasht kudeemee ryots.*

[8] See B. L. R. Sup. Vol. F. B. 215.

origin subsequent to the settlement, were liable to eviction; though, if not evicted, they under section 33 could only be called upon to pay rents determined according to the law and usage of the country—and also that the possession of all ryots, whose title commenced subsequent to the settlement, was simply a permissive one, that is, one retained with the consent of the landlord[9]." The enunciation of this doctrine as the law of the land left the zemindars free to enhance the rents of all but a small class of ryots up to any point that competition could have raised them: and the landholder class certainly cannot urge that the law in any way bound their hands or restrained them from enhancing rents, if only they desired to proceed according to the law and not in violation of the law. Regulation XI of 1822 remained in force for nineteen years,[1] namely, until 1841, when it was repealed by Act XII of this year, apparently without any saving of the rights acquired under the Regulation by purchasers who had not exercised them before the repeal. Section 27 of this Act enacted that the purchaser of an estate sold under the Act for the recovery of arrears of revenue due on account of the same, in the permanently-settled districts of Bengal, Behar, Orissa and Benares, should acquire the estate free from all incumbrances imposed upon it after the time of settlement, and should be entitled, after notice given under section 10 of Regulation V of 1812, to *enhance at discretion* (anything in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said

Act XII of 1841. Enlargement of the powers of purchasers at sales for arrears of revenue.

[9] B L. R. Sup. Vol. F. B. 219—where a case from the Sadr Dewani Decisions for 1856, pp. 617 to 628, is quoted. This was a case of sale under Reg. XI of 1822.

[1] If I appear to any to put this part of the case too strong, I can only say that I have very carefully considered the evidence, and shall be only too happy to review my judgment on good cause shown. In their Despatch of the 15th January 1819, the Court of Directors say:—"It too often happens that the quantum of rent which the ryots pay is regulated neither by specific engagements, nor by the established rates of the pergunnahs or other local divisions in which they reside, but by the arbitrary will of the zemindars . . . . . The documents here enumerated unequivocally confirm the truth of all the information of which we were previously possessed respecting the absolute subjection of the cultivators of the soil to the discretion of the zemindars."

estate, and to eject all tenants thereof with the following exceptions:—

1—tenures which were held as *istemrari* or *mokurrari* at a fixed rent more than twelve years before the Permanent Settlement:[2]

2—tenures existing at the time of the Decennial Settlement and not proved to be liable to increase of assessment on the grounds stated in section 51 of Regulation VIII of 1793:

3—lands held by *khoodkasht* or[3] *kudeemee* ryots having rights of occupancy at fixed rents or at rents assessable according to fixed rules[4] under the Regulations in force:

4—lands held under *bonâ fide* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying-grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases:[5]

5—farms granted in good faith at fair rents and for specified areas by a former proprietor for terms not exceeding twenty years, under written leases registered within a month from their date.

The power to enhance at discretion the rents of all tenants other than those falling within these five exceptions, given by this Act to purchasers at sales, afforded them the amplest opportunity of obtaining competition rents. We have no statistics showing the extent to which these powers were

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[2] These had been protected by section 49 of Regulation VIII of 1793.

[3] The force of the "or" is not apparent. Doubtless it must be regarded as interpretative or expository of the former word—see Dwarris on Statutes, p. 689. The proof of their rights was made much easier for this class by the twenty years' presumption created by Act X of 1859.

[4] Mr. Colebrooke's rule, for example, which was not repealed until 1859.

[5] This class had been protected from the beginning—see section 8 of Regulation XLIV of 1793.

exercised, but it is probable that the inequalities of rent to be found in Bengal are in part owing to the different operation of the several Sale Laws.

Act XII of 1841 was repealed by Act I of 1845, which, however, re-enacted the above provisions *verbatim*. This latter Act remained in force fourteen years, until it was repealed by Act XI of 1859. Act I of 1845.

Section 37 of Act XI of 1859 (which was passed five days after Act X) enacts that the purchaser of an entire estate in the permanently-settled districts of Bengal, Behar and Orissa, sold under the Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances, which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants with the following exceptions: Act XI of 1859. Restoration to the ryots of some portion of that which Acts XII of 1841 and I of 1845 had taken away.

1—*istemrari* or *mokurrari* tenures held at a fixed rent *from the time of*[6] the Permanent Settlement:

2—tenures existing at the time of settlement, but not held at a fixed rent, provided that the rents of such tenures shall be liable to enhancement under any law for the time being in force.[7]

3—*talookdari* and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act:

4—leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying-grounds have been made or whereon

[6] Words in *italics* substituted for "more than twelve years before" in Acts XII of 1841 and I of 1845.

[7] This protected from ejectment. They would also be protected from enhancement, if shown to be entitled to the benefit of the twenty years' presumption of Act X.

mines have been sunk: but the rent of these lands can be enhanced under the law for the time being in force, if they can be shown to have been held at what was originally an unfair rent, and if they have not been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years.

Proviso—Right-of-occupancy ryots protected from ejectment by auction-purchaser, and from enhancement at discretion.

Provided always that nothing in this section contained shall be construed to entitle any such purchaser to eject any ryot having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules[8] under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.[9]

Acts X and XI of 1859 to be read together.

In order to understand fully the above provisions of Act XI of 1859, they must be read with Act X of 1859. In this way, for example, the omission of *khoodkasht kudeemee* ryots from the exceptions in this Sale Law comes to be explained when we find Act X protecting all tenants who have held their land at rates not changed since the Permanent Settlement, and assisting the proof of such rights by the twenty years' presumption. There can be little doubt that, on a review of the earlier Regulations, the Legislature of 1841 and 1846 dealt very hardly with the ryots: and this must be fairly borne in mind when we seek to judge whether the Legislature of 1859 gave them too much.

Summary of legislation from 1793 to 1859.

To sum up the results of the above examination of the legislation from 1793 to 1859—the Legislature prohibited *enhancement by abwabs* in 1793, and has never since relaxed that prohibition—it left the customary mode of proceeding by *measurement and assessment* intact in 1793, provided

[8] These are now to be found in Act X of 1859, which repealed Mr. Colebrooke's rule and the other rules contained in the Regulations.

[9] The last portion of the sentence commencing "or otherwise" was probably intended to meet the case of dependent talooks or other tenures intermediate between the zemindars and ryots—a case not provided for by Act X of 1859.

every facility for its maintenance, and has never since interfered with it—*contract* was suggested in 1793 as the best mode of regulating the relations between zemindars and ryots, and has since been encouraged, the zemindars being given the most unlimited power of contracting in 1812 and in 1819—the Courts have remained open since 1793, ready to determine disputes as to rates, to decide on the rights of landholders and tenants whether ascertainable from written engagements or defined by the Laws and Regulations, to receive evidence of general or local usages and customs. All these means were for sixty-six years, *i.e.*, down to 1859,[1] available to all landholders—as well to proprietors of estates, which had never changed hands by a revenue sale—as to those who have acquired their estates by purchase under the Sale Laws which have been in force from time to time. To these latter additional facilities have been afforded, and for eighteen years, *i.e.*, from 1841 to 1859, they were allowed to enhance at discretion the rents of all ryots except a few protected classes. The whole course of legislation has thus recognized[2] the right of enhancement of money rents as residing in the zemindars, and has afforded them every legal facility for putting it in operation.

Right of enhancement consistently recognized by the Legislature from 1793: and every facility afforded to its operation.

It will now be useful to consider how these facilities have been used during this long period of sixty-six years. The mode of proceeding by measurement and assessment, which afforded a legal mode of enhancement, and would have provided

These facilities how used during the period of 66 years.

[1] It may be observed that Regulation IV of 1794, sections 6 (*ante* page 206) and 7 (*ante* page 206), and Regulation VII of 1799, section 15, clause 8 (*ante* page 204) were not repealed until 1859.

[2] The Privy Council have also recognized it. In the case of *Radhika Chaudhrain* v. *Bamasundari Dasi* (13 Moo. Ind. Ap. 248; S. C. 4 B. L. R. P. C. 10) their Lordships say:—"A suit to enhance proceeds on the presumption that a zemindar, holding under the Perpetual Settlement, has the right, from time to time, to raise the rents of all the rent-paying lands within his *zemindari*, according to the pergunnah or current rates, unless either he be precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognized by Regulation VIII of 1793; and it also assumes that the defendant has some valid tenure or right of occupancy in the lands, which are the subject of the suit." In the more recent case of *Forbes* v. *Mír Mahomed Hosen* (12 B. L. R. 215) they say—"The right of the zemindar to enhance rent is presumable until the contrary is shown."

the fullest record of local rates and usages and customs, has been suffered to fall into desuetude; and, as a necessary consequence, the pergunnah rates have been lost for ever. No power of the Executive Government or of the Legislature can now recall them into being. Contract has been little resorted to, some will say, because if the specific sum payable as rent had been set down in writing—*litera scripta manet*—exaction and *abwabs* would have been rendered difficult, if not impossible. No evidence of local rates and usages has been brought into the courts, which would have become a repertory of evidence of custom, had this been done. The result has been that, when it became necessary to place evidence before a Court of Justice in order to enable it to decide what enhanced rent would be fair and equitable, no evidence was forthcoming of rates and local usages upon which a judicial decision of the question could be arrived at: and for evidence upon the material issue there were substituted theories of political economy, historical disquisitions, and arguments as to policy, fitted rather for the Legislative Chamber than for the Judicial Forum. The highest court in the country were, to quote the language of one of the Judges, "asked, and in some sense compelled, to take a very large step into the region of pure legislation." The same learned Judge observed, and the truth of the observation has been abundantly proved by experience:—"It is foreign to our ways of proceeding and of deliberation to undertake the framing of a declaration of law which shall be prospective, and have application to eventual and unascertained conditions of fact; and I can scarcely hope that the effort to do this, which we are about to make, can end in a result which shall be satisfactory.[3]" The decision of a Court of Justice can only proceed upon evidence—the requisite evidence was not produced—and it is not to be found in the Regulations, for all they did was to prepare for its reception and preservation, if those concerned chose to bring it and have it preserved. It may be said that for this neglect the ryots are as much to blame as the zemindars; but this is

The result. No evidence of rates and usages forthcoming.

[3] B. L. R. Sup. Vol. F. B. 237.

not very material, seeing that the burden of proof lies upon the zemindars. They may have the right to enhance, but until they state the mode in which they seek to exercise the right, and prove that they are entitled to exercise it in this mode, a Court can do nothing for them.

Argument that Legislature has caused the zemindars difficulties by passing Act X of 1859.

It may be said that, up to the passing of Act X of 1859, the zemindars managed very well: and that all their difficulties are due to the passing of this Act—to taking away their power over their ryots and giving the great body of the ryots a right of occupancy, a right to hold their land without the fear of ejectment. Undoubtedly the difficulties of the zemindars have been in some measure brought about by Act X, but in all human probability the natural progress of the people would without the Act have brought about the same result a few years later. The power, which the zemindars possessed, of compelling the attendance of the ryots and confining them, was one which a free Government could not allow one class in the community to exercise for any considerable length of time; and there were some who thought that it should have been taken away much sooner than it was. It has been said—and the statement has been supported by evidence—that this power was used to effect enhancement by *abwabs* which the law forbade; and that this is the true meaning of the zemindars managing very well up till 1859. It may be argued that, if this were not so, if up till 1859 the rents of the ryots were enhanced so as to keep pace with the improvement of the country, and this by means which the law allows—by contracts—by resort to well-known rates and local usages—then evidence of these contracts and rates and usages would be forthcoming, and the Courts would have material to work upon: but as no such evidence has been produced, if there have been enhancement, it can only have been by means which the law has not sanctioned; that, if there have been no enhancement, the right to enhance ought to be regarded as being as much obsolete as the pergunnah rates mentioned in the Regulations of 1793.

Power of compelling ryot's attendance taken away.

Effect of right of occupancy.

Then as to the right of occupancy, however desirable and equitable it was to protect the old tenants, who themselves or whose forefathers had reclaimed the waste or cut down the *jungal*, or whose ancestors for many generations had dwelt on the land, I agree with those who are of opinion that there was no necessity for giving a right of occupancy to every man who happened to hold cultivated land for twelve years. But the thing has now been done: and this right once conferred cannot be taken away. That, however, it has contributed much to the zemindar's difficulties I am not inclined to think. The ryots became very slowly acquainted with it; in many parts of the country the local officers testify that they know nothing about it. Whether the ryot could be ejected as long as he paid his rent, has been a moot point since the Permanent Settlement; the stronger opinion being that he could not, and the lapse of time further strengthened this opinion. Even those who would not concede this right of occupancy as to all ryots, admitted it as to some, and Act X only settled the question liberally with respect to the ryots. As remarked so often, the competition used to be between zemindars for ryots, not between ryots for land: and it was only in the latter event that the power of ejectment could have become a formidable weapon. The Sale Law of 1841 put it, fresh sharpened, into the purchaser's hand; but it is remarkable how little he used it.

If then the Legislation of 1859, by taking away those powers which were inconsistent with the liberty of their fellow-subjects, and by introducing the sub-divisional system of Courts, which carried protection home to every man's door, compelled zemindars to resort to the Courts for the exercise of their rights, compelled them to do at last that which they ought to have been doing for the previous sixty-six years—and if on going to Court they find there no principle of enhancement, and have none to take to Court with them—and if there was a principle indigenous in the country which, in consequence of their non-use, has become

extinct—it may be contended that, in asking the Legislature to find a substitute for the principle which has been lost through their *laches*, their petition is not so much of right as of grace. If the Legislature of 1859, when laying down the rule of "fair and equitable" as the sole canon of guidance for the Courts, was under the impression that evidence of rates and usages would be forthcoming to prove what was fair and equitable in each case, the experience of twenty years has shown this impression to be a fallacious one. The Courts have been unable to find a principle of enhancement, apparently because none such exists, and, what is not, cannot be found. Unless the Legislature create one, things will remain as they are: and this, in other words, means that the zemindars will be unable to enhance rents further, and that the ryots will benefit by the whole of the unearned increment. "Half a loaf is better than no bread:" and some will say that it is wise for the zemindars to accept now the half loaf that remains, before the ryot produces a further increased family to prove that this also cannot be taken from him without starvation as the result to human beings, this being a sort of argument against which abstract rights of property usually weigh but little.

No practical principle of enhancement now in existence.

The task proposed to the Legislature being then to create or enact a rule of enhancement in substitution of that which formerly existed in the country, but has perished or been lost, it will be useful to see, *first*, what is to be the exact limits of application of the desired rule. It will then be proper to notice some equitable considerations that ought perhaps to be regarded in moulding the rule into shape. I shall afterwards examine the existing Enhancement Law to discover if possible where it has failed, and why. Finally, I shall state what suggestions have been made for its amendment. As to the limits of application, then, the required rule needs to be applied only to rents paid in money. Where rent is payable in kind, at least under the *agore bhatai* system, by which the actual crop is divided,

Legislature called upon to create a principle, to enact a rule of enhancement.

Limits of application of the necessary rule.

no rule of enhancement is necessary. Then the rule is required only for ryots having a right of occupancy. As regards ryots not having a right of occupancy, if landlord and tenant cannot come to terms, the landlord can by serving a reasonable notice to quit[4] recover possession of his land. In the case of ryots holding at fixed rates no question of enhancement of course occurs. A certain class of dependent talookdars is provided for by section 51 of Regulation VIII of 1793: and the twenty years' presumption of Act X secures an additional number. There still remains, however, a considerable body of persons holding intermediately between the zemindars and the ryots, and it may be desirable that some rule of enhancement should be laid down for these. Where such intermediate tenures have been created by written instruments, which do not provide for enhancement, it must be matter for consideration if the Legislature should annex an incident which the contracting parties have not themselves provided for. In other cases the rule afforded by section 8 of Regulation V of 1812 (see note at page 27 of the Digest) may appear to be a reasonable one.

The Courts being unable for want of evidence to lay down any general rule, practical, fair and equitable, the Legislature, in devising a practical rule, must also endeavour to make it an equitable one—equitable not only in respect of its future operation, but equitable as regards the actually existing state of things to which it has immediately to be applied. If for a considerable number of years the whole of the unearned increment has been left to the enjoyment of the ryots, or a greater share than according to any set of opinions they are entitled to, it will scarcely be contested that population has increased with this increment—that the standard of comfort or living (whichever term is thought more appropriate) has been adjusted according to it. Some will assert that in these provinces the margin beyond bare

[4] See Articles 12 (clause 7), 49, and 50 of the Digest.

sustenance is not sufficient to create comfort, and is so small that it cannot be narrowed without taking away the necessary food of men and women and children. Putting, however, the argument in its most moderate form, it will be admitted that if a rent paid for a number of years be at once, *per saltum*, trebled, or quadrupled, or quintupled, or raised even higher,[5] the tenant, who is suddenly compelled to cut down his expenditure to the extent to which he must do, if he is to pay the rent thus enhanced, must undergo, if not actual distress, certainly a considerable degree of hardship. He may be told that he ought to be grateful for being so long allowed to enjoy that to which he had no right; but no argument will convince *him* that he has not suffered a grievous wrong. It may be said that the Legislature ought not to take account of grievances which are based on such erroneous conceptions, and that time and education will bring the ryot to a better comprehension of rights. It may be pointed out that it was decided in 1856,[6] by four Judges against one, that no limitation bars a landlord's claim to enhance the rent of a ryot not specially protected by the Legislature, and that the law so laid down has never been altered. On the other hand, it may be replied that there is much sense in the judgment of Mr. Torrens, the dissenting Judge—that many will now agree with him in thinking the analogy between English landlords and tenants, and Bengal zemindars and ryots, a false one—that the rule of English law which appears to have at that time exercised considerable influence upon the four Judges who formed the majority has since been abrogated[7]—that the policy of limiting

Hardship of sudden and great enhancement.

[5] In some parts of the country notices of enhancement at these rates were served in large numbers—see *Annual Administration Report*, 1872-73. In *Isshur Ghose's* case the enhanced rent decreed was one rupee per *bigha*, which was three times the original rent. In *Thakurani Dasi's* case four rupees per bigha were claimed.

[6] Sadr Dewani Decisions for 1856, p. 617.

[7] See 3 and 4 Wm. IV, Cap 27; and Lord Cairns' "Real Property Limitation Act, 1874," 37 and 38 Vict., Cap. 57, which reduced the period of limitation for suits for the recovery of land or rent to twelve years. In the recent case of *Field* v. *Selle* before the Court of Queen's Bench Division on the 14th June last (not yet regularly

suits, of barring by statutes of repose rights not exercised within a reasonable time finds increasing favour with civilized Governments, controversies being limited to a fixed period of time, to use the felicitous language of John Voet, *ne autem lites immortales essent, dum litigantes mortales sunt*[8]—and that in India the course of modern legislation and also of modern decision has, in the analogous case of *lakheraj* land,[9] to a considerable degree modified the rules laid down in the earlier cases, by giving force to the contrary presumptions arising from long possession and enjoyment. Here, as elsewhere in these two Notes, I shall not sum up the arguments or consider on which side the preponderance lies. If, however, it be thought that the above equitable considerations should have influence with the Legislature, the following points may then appear to deserve attention—should every enhancement be limited, so that the new rent should not be more than, say, double the former rent—should every inquiry be restricted to the progress of a certain period, say ten years before the institution of the suit—should every enhancement based upon an increase in the value of the produce, or of the productive powers of the land, hold good for a fixed period, say ten years, neither party being allowed to re-open the question except in case of alluvion or diluvion? It may be thought that if these or similar rules were adopted, there would be some repose, some cessation of litigation, and that a zemindar—who allowed twenty years to pass without raising his ryots' rents when he was entitled to do so, thereby letting them get into the habit of spending more than they otherwise would have done—is

Points suggested for consideration.

reported, but noticed in *The Law Times* of the 21st June, and to be found in *The Times* of the 16th June last), it was held upon this latter statute that, if no rent were paid by a yearly tenant for more than twelve years, he would acquire the title.

[8] "Lest suits should be immortal, whilst the litigants are mortal."

[9] See the language of the Privy Council in the case of *Forbes* v. *Mir Mahomed Hosen*, 12 B. L. R. 215; and the course of legation as to limitation in respect of *lakheraj* suits, as explained at pp. 253-54 of my edition of the *Bengal Regulations* There is a strong analogy between *lakheraj* suits and enhancement suits, the object of the former being to *impose*, that of the latter to *increase*, rent.

justly refused any increase which he might have had for the first half of this period, and is justly limited to what the second half can give him.

Grounds of enhancement under Acts X of 1859 and VIII (B.C) of 1869.

The following are the grounds upon which, under existing law, a ryot having a right of occupancy is liable to enhancement of the rent previously paid by him:—

1—that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent:

2—that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot:

3—that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid.

Rate below rate for similar lands in places adjacent.

In respect of the *first* of these grounds of enhancement, it has already been pointed out (*ante* p. 217) that the words "prevailing rate" and "payable by the same class of ryots" considerably limit the application of the rule, and effectually prevent competition from affecting the rate of rent payable by ryots having a right of occupancy.[1] All that the rule comes to in its present shape is really this, that one ryot of this class can be made to pay as high a rate as another ryot of the same class. It affords no means of raising the rate of rent payable by the class generally. Whether it would be well to strike out these words and so to mould the rule as to make this a ground of enhancement that a considerable number of ryots (those not having, as well as those having a right of occupancy) are paying a higher rate for similar land in the neighbourhood—is a point which I merely suggest for consideration. If the rule were so altered, those[2] who do

[1] These words do not occur in section 7, Regulation XLIV of 1794, which speaks of "the established rates of the pergunnah for lands of the same quality and description."

[2] "The present case is that of a ryot having a mere right of occupancy It is a mistake to suppose that such a ryot has any interest in the land, which gives him a right to a

not agree in the view that a right of occupancy confers no privilege of holding at a rent lower than a competition rent, will probably contend that a deduction from this rent should be made in favor of the right-of-occupancy ryot.

Quantity of land held by ryot more than rent was previously paid for.

The *third* ground of enhancement, namely, that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid—can scarcely be said to be a ground of enhancement in the more accurate acceptation of the term. Certainly the enhancement to which the first two grounds are directed, and the enhancement which is obtainable under the third ground are essentially different. In the former case, the rent itself, the rate, is increased—in the latter case the rate is not increased, the ryot is merely made to pay rent for additional land which he obtained by error in the first instance, or subsequently by encroachment or alluvion. In any of these cases it is reasonable that the ryot should pay additional rent for the additional land. There is, however, a class of cases in which there has been neither encroachment nor alluvion; and to which the application of the rule is not very satisfactory. I mean cases in which the ryot did not take and has never held his land by measurement, *i.e.*, so many *bighas* at so much per *bigha*. His *jumma* or holding is known and usually described by the name of some one who formerly held it, as for example, "Fakir Das's jumma;" and, if the quantity of land included in it is ever stated, it is "by repute" and not as an essential part of the description. Very frequently these *jummas* are described by

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share of the rent. He has merely a right to occupy the land in preference to any other tenant so long as he pays a fair and equitable rent"—*per* Peacock, *C. J.*, in *Hills* v. *Isshore Ghose*. And again—"His right of occupancy gives him a right to occupy at a fair and equitable rate; but, when an alteration in the rent is to be made in consequence of an increase in the value of the produce, he is not entitled, in strictness, to have it fixed at a lower rate than that which a tenant not having a right of occupancy would give for it." Sir Henry Ricketts, in a communication dated 1876 and to be found amongst the printed papers, says that, as far as he can recollect, in all the discussions in preparing Act X, and in all the suggestions received from all parts of the country, there never was mention made of any considerable advantage to occupancy ryots beyond protection against causeless dispossession.

their boundaries, and here the maxim, *falsa demonstratio non nocet*, should govern according to the usual rule, the description by boundaries prevailing over the mention of the quantity of land. Land was not usually let to ryots by measurement: and the rule would perhaps be properly restricted to cases in which it had been so let, or in which there was clear evidence of additional land, not included in the original holding, having subsequently come into possession of the ryot by encroachment or alluvion.

Value of produce or productive powers of land increased.

The *second* ground of enhancement is the most important of the three, viz., that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot. There are here really two grounds of enhancement, created by separate and distinct causes.

Value presumed to mean money value or price.

"Increase of value" presumably means "increase of money value." I believe this has been generally accepted as the meaning; otherwise we would get into inquiries still more difficult and perplexed than those directed in the case of *Isshur Ghose* or that of *Thakurani Dasi*.[3] Now, an increase of money value or price may be the result of a *general* cause affecting the country or province equally, or of a *special* cause affecting merely the particular locality. As money rents are in these provinces paid in silver, an increase in the quantity of silver in the country and a consequent decrease in the value of silver is a *general* cause affecting the whole country. Produce grown in the vicinity and produce of the same quality grown at a distance fetch exactly the same price in the same market; but the seller of the produce grown in the distant place really receives as much less as the carriage to market costs, which expense does not fall upon the seller of produce grown in the vicinity. If the

Increase of price may be caused by general or special cause.

[3] The word "value," when used without adjunct, always means in Political Economy *value in exchange*, or, as De Quincy calls it, *exchange value*. Mr. Mill uses "price" to express the value of a thing in money, and "value," or "exchange value," to express its general power of purchasing, the command which its possession gives over purchasable commodities in general. Upon any revision of the law the term "price" should be substituted for "value."

former sold the produce on the spot where it was grown, the price would be actually so much less. Now, if a market were opened near to the distant place, or a railway, increasing the facility of carriage to good markets were constructed, either of these causes might produce an increase of price, but this would be a *special* cause affecting only the particular locality.

Rise of price of agricultural produce.

The increase of prices or, to speak more precisely, the rise of the price of agricultural produce, which has been brought about by general causes of late years, has in all probability mainly contributed to the present importance of the question of enhancement. Let us examine what we mean by a rise of the price of agricultural produce—it means that more silver is given for the same quantity of produce—let us say rice, for example—than previously. This may be brought about in two ways. *First*, the quantity of silver in the world or in the country may have been increased, and the value of silver in relation to rice will therefore be lessened, or, in other words, a greater quantity of silver is given in exchange for the same quantity of rice than previously. *Secondly*, there may be a greater demand for rice than before, owing either to increased demand for exportation or to there being more persons in the country requiring to consume rice than there were previously. Let us now suppose that rice is grown on certain land—that the price of rice is Re. 1 per maund in 1870, and Rs. 2 per maund in 1880—and that the quantity of rice produced continues to be the same. The landlord who gets Re. 1 rent in 1870, gets the equivalent of one maund of rice: while in 1880 he gets the equivalent of only half a maund of rice. If one maund of rice represented in 1870 the proportion of the produce of a *bigha*, which the landlord was entitled to receive, he is entitled to receive the same proportion in 1880, but the price of the maund of rice is then Rs. 2, and the landlord is therefore entitled to receive Rs. 2 as rent. If the rise of price be due to the depreciation of silver, and if the landlord's sole source of income be money

rents, his income will really be reduced to half, for the same quantity of silver will purchase only half the quantity of all commodities. If the rise of price be due to increased demand, he will not be so badly off, for, though his silver will purchase only half the quantity of rice, it will purchase the same quantity of other commodities, unless their relative values also have changed, and that is a matter with which this enquiry is not concerned.

Mistake of reserving a money rent.

What I have here endeavoured to explain in few words was well understood by our ancestors, than whom we are so much wiser. Adam Smith fully understood it; and though his *Wealth of Nations* was published before the Permanent Settlement, it is impossible to believe that the authors of that measure had read it. Had they done so, they would scarcely have made the fixed revenue payable in money. "The best way of reserving perpetual rents," says Mr. Chancellor Kent, "if it be intended that rents should always be of the same value, is to stipulate that the payment be in kind, such as wheat or other produce, or in cattle or in poultry. This was the almost universal practice in ancient times, and a great proportion of the ancient leases in New York, in the manor counties, were of that description. By the statute of 18 Eliz. one-third part of the rent upon college leases was directed to be reserved in corn, to be paid either in corn or at the current prices at the nearest public market. We have an instance in New York of the same provident foresight in the act of instituting the University, and limiting its annual income to 40,000 bushels of wheat. This arrangement saves the interest of the persons in whose favor rent is reserved from sinking by the depreciation of money, owing to the augmentation of gold and silver, and the accumulation of paper credit. The rents which have been reserved in corn, says Dr. Smith, have preserved their value much better than those which have been reserved in money."[4]

[4] III Commentaries on American Law, 597.

Money rent should vary with price of agricultural produce.

If some rule could be devised, the operation of which would cause money rent to vary—rise and fall, for this alone would be fair to both parties—with the price of agricultural produce, it may be thought that the greatest difficulty of the enhancement question would have been overcome. When I come to speak of the remedies which have been or may be suggested, I shall have something to say about the feasibility of such a rule. Here, however, it may be observed that in the cases which ordinarily come before Courts of Justice, one or two persons only on either side are concerned in the matter in controversy, and it is therefore usual that many persons be not made co-plaintiffs or co-defendants: but in this question of rise of price of agricultural produce all landlords and tenants are concerned; and if all the landlords in a district may not suitably be on one side in the proceedings, and all the tenants on the other side, certainly the question may fairly be dealt with as between one landlord and all the tenants on his estate.

Increase of the productive powers of the land.

The case of an increase of the productive powers of the land and the case of a rise of price effected by some *special* cause are in the same category; and, if severed from the greater question of rise of prices from general causes, would in all probability afford little trouble. Where the increase of the productive powers of the soil is due to the ryot's agency, he is properly allowed to enjoy the fruits of his industry or the profits of his capital, and is protected from enhancement of rent. Where the Legislature has compelled the carrying out of large public schemes of improvement, it has compelled the ryot to contribute to the expense; or, if the zemindar has had to pay in the first instance, it has given him the means of recouping himself. If the zemindar desires to effect improvements out of private funds, he can contract with the ryots for an increase of rent before he expends his money. Where the cause of the increase is an accident, *e.g.*, a railway, a fertilizing inundation, a change in the condition of the land caused by some

river or *khal* altering its course, the ryot may contend that these fall within the chances of profit and loss, of which he took the risk in agreeing to pay a regular annual money rent. If this argument do not prevail—and in some cases it may seem to claim too much—a rule can easily be laid down for the distribution of the increase, declaring the zemindar entitled to one-half or one-third thereof. There is no great principle involved, and the *sic volo, sic jubeo* of the Legislature may settle the matter as appropriately as it declares a period of limitation for suits, or fixes the time within which a right of occupancy may be acquired. It is more important to provide a rule than to say what the limits of the rule in either direction are to be.

Proposed solutions of the Enhancement question since 1859.

The following solutions of the Enhancement difficulty have been propounded since the passing of Act X of 1859 :—

1—In the case of *Hills* v. *Isshore Ghose*[6] it was held that the ryot was merely entitled to the wages of his labour and to the profits of his capital according to the usual and ordinary rate of agricultural capital—that the zemindar was entitled to the overplus of the value of the produce after these deductions, and could enhance to the full limit of this overplus.

2—In the case of *Thakurani Dasi* v. *Bisheshur Mukherji*,[7] it was decided that, in cases of enhancement on the ground of the value of the produce having increased, the enhanced rent should be calculated so as to bear to the previous rent the same proportion that the increased gross value of the produce bears to the previous gross value.[8]

3—It has been suggested that public officers should be deputed to find fair and equitable rates by proceedings similar to those of the Settlement

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[6] W. R. Special Number 1862-64, pp. 48, 131, 148.

[7] B. L R Sup. Vol. F. B. 202.

[8] *See* Digest Article 44, pp 40 41.

Officers in the North-Western Provinces, and that enhancement should proceed on the basis of the rates so obtained.

4—It has been proposed that disputes about enhancement should be determined by Arbitrators chosen, one by the ryots, one by the zemindar, and a third by the Collector.

5—It has been thought that the landlord's share might be regulated according to the proportion which the land revenue bears to the rental of the estate.

6—Some have advised that rent be made a fixed proportion of the gross produce.

7—Others have recommended that it be made a settled proportion of the net produce.

8—Some, who have carefully considered the whole question, have thought that we might find a competition rate, and allow the right-of-occupancy ryot a deduction from this.

9—It has been supposed that we might obtain a new standard by ascertaining what ratio present rents bear to the value of the produce, and guiding ourselves thereby in future.

10—Finally some, who still believe in the wisdom of our ancestors, think that in the principle of *The Tithe Commutation Acts* we may possibly find a way out of the difficulty.

Rule laid down in Isshur Ghose's case.

It is generally supposed that the case of *Isshur Ghose* was overruled by that of *Thakurani Dasi*, and that the rule laid down in the former case has no longer any operation. It may, however, well be that this rule covers much wider ground than that propounded in the later case, which applies only to cases of enhancement on the ground of increase in the value of the produce, and where the rent is a customary rent. Be this as it may, it does not appear that any attempt has ever been made to apply it since the decision of *Thakurani Dasi's* case; and indeed the number of items which

enter into the calculation of outgoings, value of produce and cost of production, and the amount of evidence necessary in order to make anything like an accurate calculation of these items, would preclude this rule from ever becoming of practical application. Then many who have no particular *philo-ryot* proclivities, have thought the principle thereby enunciated to be hard and unjust to the cultivator, and have expressed a decided opinion that, however applicable it may be to competition rents and capitalist farming, it is not fair and equitable when applied to the circumstances of these provinces and the condition of the people of Bengal. It may be observed that Mr. Justice Trevor, who in conjunction with Mr. Justice Elphinstone Jackson founded the doctrine of proportion, was of opinion that, if the landlord in *Isshur Ghose's* case had been an auction-purchaser under the Sale Law of 1841 or that of 1845, which gave the power of *enhancing at discretion*, the decision would have been a sound one. No one, however, at present advocates that the principle of this case should be adopted by the Legislature, and it is therefore unnecessary to consider it further. It certainly had one beneficial effect in that it caused people to discuss the theory of rent in India, and enter upon the practical consideration of a most difficult subject with more definite ideas than had previously been common amongst officials or landlords.

Case of Thakurani Dasi—Rule of proportion.

The rule laid down in the case of *Thakurani Dasi* is not one of general application. It applies only where the value of the produce has been increased otherwise than by the agency or at the expense of the ryot, the productive powers of the land and the cost of production remaining the same. Then it applies only where the previous rent was a customary one, *i.e.*, a rent fixed according to the rate commonly payable by the same class of ryots for similar land in places adjacent and representing a share of the gross produce calculated in money. The rule was expressly guarded as having no application to tenants holding under written engagements in which the rent was based on data inconsistent with the

presumption of the rate being a customary one. The formula derived from the rule is this—

Former gross value of produce on average of three or five normal years	:	Present gross value of produce on average of three or five normal years	:: Former rent :	Enhanced rent.

The first three terms of this proportion must be proved by evidence, before the fourth can be calculated: but the difficulty of proving *when* the rent was previously fixed and what was at that time the gross value of the produce is practically so great that the most experienced officers have pronounced the rule to be unworkable, and the zemindars have confirmed this verdict by giving up all attempt to work it in their own interests. The expense of producing the necessary evidence in each of many hundred or thousand cases is further an almost insuperable difficulty to its general application. One proprietor is said to have spent a lakh of rupees in enhancement litigation without much practical result, before the inutility of the present law had been demonstrated.

Suggestion for the employment of Settlement Officers.

The employment of Settlement Officers to determine the rates has been advocated chiefly by those who have had experience of settlement duties, and they appeal with some confidence to the good work done by Settlement Officers in the Punjab, in the North-Western Provinces, in Bombay, in Madras, in Burmah, in Assam, in Cuttack—work, which has repeatedly obtained the unqualified approval of the highest authorities for its fairness and equity, and with the results of which zemindars and cultivators have alike been satisfied. A retired member of the Civil Service, formerly well-known and still remembered in these provinces for his ability and experience in settlement work, writes thus:—"Careful inquiry on the spot and in the neighbourhood seldom, if ever, fails to discover the fair market rate. Tenants are always found holding at rates greatly varying one from the other. Inquiry into the cause of this variety always discloses the market rate. Ryots die, leaving no heirs. Ryots, from misfortune, or from a desire to try some other

means of earning a livelihood, abandon their holdings. New tenants are found in the holdings left. They have been admitted, some a few years ago, some very recently, on such terms as were acceptable to both parties. Though there may be no written contracts, the rate of rent to be paid by each was settled when possession was given. Maybe the rate payable by no two is exactly the same. Some took possession immediately after a very bad season, when land was abundant; others after a very good season, when land was scarce. It is next to impossible for an intelligent Settlement Officer in tracing this variety, which he always finds, to fail to discover the market rate. Though never expressed in terms, this market rate always gives the ryot something more than mere wages of labour and profits of stock; and this must be the case to enable him on an average of years to maintain his position. Risks must always be regarded as a heavy item with ryots having little, if any, capital, in a country where the vicissitudes of season are so great, where the periodical rains commencing a few days earlier, or ending a few days later than usual, may make the difference of half the crop. Moreover, in such a climate as that of India, where any continuous labour is so exhausting, it is hopeless to look for industry unless it be excited by ample reward. All this is entirely understood by those who have had any experience in the management of labour in Bengal. All know that a man to work with any diligence must work for himself. The ryotee system is, in fact, the consequence of this necessity for a stimulus. The people are not what in England would be considered industrious even with this all-powerful inducement: without it there could be no proprietary interest worth the name, for to ensure work the cost of superintendence would leave no gains. All these circumstances are familiar to agriculturists, and though there may be no expressions in any leases and contracts conveying such a meaning, all rates are governed by these considerations, and such a margin left to the ryot as shall make very moderate work produce

Considerations which guide Settlement Officers.

very considerable gain." It is not easy to say why the suggestion for settling rents in Bengal through the particular agency of Settlement Officers has never been seriously considered or experimentally tried. The expense is no doubt a very considerable difficulty. Settlement Officers have usually laboured in districts or estates not permanently settled, and in which therefore the Government had a direct interest in the question of rent as affecting that of revenue. It may have been thought that, when the State has no pecuniary interest in the result, it would not be justified in spending public money for the special object of adjusting the relations of landlords and tenants, who form but a portion of the community. That they should pay the cost of the necessary agency is a proposal that would not be very acceptable, and would probably not be feasible to carry out. When an officer is engaged upon the settlement of a district, or of a large estate, the expense of his employment falls upon a considerable area; and working upon a large area he can generalize widely and therefore the more correctly. Disputes about rent do not extend over entire districts: nor, unless in some exceptional cases, do they include all the tenants in an estate. However excellent may be the result of employing Settlement Officers on a large scale, there are therefore very considerable difficulties about employing them for small detached inquiries; and there may be doubts whether upon such inquiries their labours would be attended with the same degree of success which has followed efforts less cramped and confined. Act VI (B.C.) of 1876 offered an opportunity of trying this procedure: and it is remarkable that during the three years for which the Act remained in force not a single application was made to put it in operation.

Suggestion that Arbitrators be appointed.

The suggestion as to the appointment of Arbitrators should, in order to secure a trial, take the form of a recommendation that reference to arbitration be made compulsory. As the law at present stands, recourse *may* be had to arbitration under the provisions of the Code of Civil Procedure; but it is the experience of the Courts that little use is made

of the facility provided for terminating disputes in this manner. Compulsory reference to arbitration has never been adopted as part of the judicial procedure of this country: and there are many good reasons against its adoption. Arbitration, though extremely useful in normal disputes involving points not susceptible of ready proof by the usual means of evidence, is not likely to be successful with the ignorant and uneducated, little capable of reasoning, when passions are roused, and extreme views prevail without any admitted rule to moderate them. Such persons, moreover, and especially in India, believe in no man's honesty: and if defeated would set down their defeat to the corruption of the Arbitrators. Individual litigation might thus be terminated, but the great controversy would remain.

Idea that rent be regulated by ratio of revenue to rental.

The idea that the landlord's rent might be regulated by the proportion which the Government revenue bears to the rental of the land does not seem to have found acceptance with any one; and the figures obtained from the Road Cess returns show that it would not be possible to accept it as a rule of general application. Estates were originally so unequally settled or have improved so variably since the Permanent Settlement that the ratio of rent to revenue now differs from twice to forty-six times: and on one estate in the Bhagulpore division the total rental was found to be three hundred and seventy-eight times the Government revenue.

Proposal that rent be made a certain proportion of the gross value of the produce.

The proposal that rent should be made a certain proportion of the gross value of the produce has found favour with very many persons; and, if carried into effect, would be a return to the old principle of the country. When Act X was before the Legislative Council, Mr. (since Sir Henry) Ricketts urged that the rule so drawn up (it was then in the form in which it was afterwards passed) could not be worked, and he proposed as an amendment that, if in a suit for enhancement or abatement the evidence produced by the parties failed to show what rate of rent was equitably assessable on the land in the ryot's possession, the Collector should proceed to

ascertain the market-value of the average gross produce of the land and should declare *two-fifths* of the ascertained value to be the rent payable for such land. It was proposed to provide further that, if there were special circumstances owing to which the cultivation of the land was necessarily attended with more than ordinary expense, the Court might in its discretion give less than two-fifths. Rent once so settled was not to be open to question for twelve years.[7] One cannot help regretting that the Legislature were not induced at that time to adopt the suggestion of this experienced Settlement Officer. There are now two difficulties in the way of applying this rule, which, if not created, have been enormously increased by the lapse of twenty years. First, a much greater variety of crops has been introduced, many articles of produce being now cultivated which were unknown to the grandfathers of the present generation. To enter into calculations in order to fix what proportion of each crop should be taken as the rent, would involve those inquiries into cost of production and other matters, which have been found so difficult to conduct, so unreliable in their results. Then to lay down any rough-and-ready rule might work injustice, and discourage the cultivation of particular articles upon which the rule bore with disproportionate pressure. The other difficulty in the way of a general rule is the remarkable diversity which prevails, not only as to the share which, in the opinion of different persons, should be allotted to the zemindar, but in respect of the share which he now actually gets in different parts of the country. Mr. Ricketts proposed *two-fifths*. It was urged in Council that *one-fourth* would be fairer. Some think that *one-sixth*, which the Hindu Code gave, is very reasonable. Akbar took a *third*, and some would give the zemindar no less now. In Rungpore he is said to get as much. In Behar he gets a *half* or even more. *One-fourth* is recommended for Chittagong. *Six-sixteenths* is mentioned for Orissa. The ryots of Nattore would give their zemindar

Difficulties in the way of applying this rule.

[7] *See* Proceedings of the Legislative Council of India, Vol. V, p. 222.

one-eighth. In Dacca *one-twentieth* is said to represent the landlord's share: and the moderation of the zemindars in that district is said to have shrunk from the proposition that they should have *one-fifth.* Finally, the evidence of District Officers and Commissioners shows that the rent now paid the zemindar represents shares of the gross value of the produce varying in different parts of the country from *one-half* to *one-fortieth.*[8] It has been already observed that these inequalities were no doubt in some degree caused by the varying operation of the different Sale Laws. In some places, again, more determined pressure was used: in others resistance was more obstinate. Where the zemindar continued to collect from the ryots, not creating intermediate tenures, the cultivator was left more than the unhappy serf who groaned beneath the superincumbent weight of half-a-dozen middlemen. Thus the same rule, that in one place would work an enormous enhancement to the terror or ruin of the ryots, would in another place effect an unasked abatement to the impoverishment of the zemindars. If the facts which give these results are correct, it seems difficult to say that any rule as to a fixed proportion of the gross value of the produce can be laid down without disturbing existing relations to the dissatisfaction of both parties. It has also been observed, and the observation deserves consideration, that any calculation upon the gross produce discourages the ryot from exerting himself to increase the quantity of that produce, and so counteracts a quality which it is desirable to foster.

Proposal that rent be made a fixed proportion of the net value of the produce.

If a fixed proportion of the net value of the produce were to be made the measure of the rent, it would be necessary to make the same calculations as in *Isshur Ghose's* case; and the difficulty of such investigations, the unsatisfactory results obtained, and the enormous cost of litigation, in which they have to be repeated in individual cases, have already been observed upon. If the rule of proportion were to be adopted, Sir Barnes Peacock has shown with much force

[8] In *Isshur Ghose's* case the old rent was *one-fortieth*, the enhanced rent given by Sir Barnes Peacock's judgment was *one-sixteenth* of the gross value of the produce.

that this rule would be fairer, if applied to the net produce than to the gross produce.[9]

Rent of right-of-occupancy ryot calculated on a competition rent, a deduction being allowed therefrom.

The next suggestion is that the rate of rent be ascertained which is paid by ryots not having a right of occupancy—this would in fact be a competition rate—and that in the case of ryots having a right of occupancy a deduction be made therefrom. The zemindars are willing to give a deduction of twenty-five per cent. This seems a reasonable offer, and it is in accordance with a principle introduced and followed in other parts of India. The first difficulty with which we are here met is that in some parts of the country, as for example in Rungpore and Bogra, there is said to be no difference between ryots having a right of occupancy and those not having this right, or between the rents paid by each class. In other parts of the country the right-of-occupancy ryot (probably he is something more than the creature of Act X) is said to pay the higher rent in consideration of the stability of his position; or the non-occupancy ryot pays the lower rent because he has been induced by low rates to reclaim waste or clear jungal. Again, it has been pointed out that, where the non-occupancy ryot pays the higher rent, he pays only for land which he actually cultivates, while the right-of-occupancy ryot pays a lump-sum for good and bad land, part of the whole having to be occasionally left fallow. In another district the competition rate is low, because it is the custom to pay a *salâmi* or fine when entering upon a vacant jumma. This proposal has been impugned on the ground that it will stimulate rack-renting, the non-occupancy ryot being thrust down by being made the *fulcrum* of a lever to raise the rents of the ryots having a right of occupancy. It is also said that the principle will be unequal in its first effects: and that the inequality will be increased by every subsequent operation. No doubt there is something in these objections: but then there is no scheme which can be devised, against which some objections may

[9] B. L. R. Sup. vol. F. B. 334-335.

not be brought forward: and the best scheme will be that against which the objections are fewest, whilst its advantages are real and substantial. Even, however, if this principle be adopted, it cannot be made of general application in all parts of the country, and in applying it, considerable care would be necessary in order to eliminate exceptional circumstances.

Suggestion to take the present ratio of rents to value of produce as the initial standard.

The next suggestion is that of making a new standard by first ascertaining the ratio of present rents to value of produce. If after completing the inquiries necessary to ascertain this ratio, a sufficient similarity be found to exist in the relation of rent to the value of produce in all parts or in certain parts of the country, then it is proposed that we should adopt by law a standard rate or standard rates varied for territorial divisions. If no sufficient similarity be found to exist, all the inquiries would have been made in vain. It may be doubtful if any possible advantage that could be derived from the information obtained while making inquiries in themselves abortive would justify the expense that must be incurred, and the raising of popular expectation—raised but to be disappointed. If such inquiries were carried on all over the country, we would no doubt have all the benefit of Settlement Officers working on a large scale; but, suppose that we had ascertained the existing ratio of rent to value of produce, and that we could see our way to declaring by law a number of standard rates varied for different territorial divisions, there comes the serious question whether we would be justified in stereotyping these rates—in fettering future progress. Unless we were prepared to forbid all contracts, deviations would commence almost as soon as the standard rates were published: and in the course of a few years we would have to repeat our inquiries and publish a fresh set of standards. No doubt we would in the intervals of publication have a fixed rule by which the Courts could govern themselves in cases other than those of contract; but we would still be hampered with the necessity of ascertaining in every

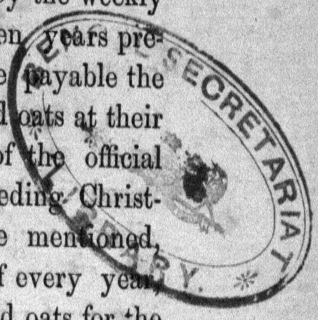
disputed case the value of the fixed proportion of the produce upon an average[1] of years: and the only way that this can be done at all satisfactorily is by a local inquiry upon the spot in harvest time, which inquiry would have to be repeated for several years in order to obtain the necessary data. Having tried some thousands of cases in the Nuddea district when enhancement litigation was there at its height, I know from personal experience the difficulty, if not impossibility, of obtaining any reliable information upon such matters by oral evidence taken in Court.

Principle of The Tithe Commutation Acts.

I come in the last place to the principle of *The Tithe Commutation Acts*. Tithes were formerly paid in kind, *i.e.*, the person entitled to the tithe received a tenth of the crop. This system was found to be vexatious in the extreme and productive of disputes and litigation, just as the system now in force in parts of Behar produces constant irritation and oppression. It was finally decided to put an end to a source of so much bitterness and want of charity: and the following rules were laid down for the conversion of tithes into a money payment:—(1) Find the gross average money value

[1] Unless the calculation be made upon an average of seasons, the tenant's interest may suffer by years of drought, inundation, and consequent whole or partial failure of crops not being taken into account: and the landlord's interest may suffer by excluding years of bumper crops and unusual plenty. The number of years taken for the average should be large enough to include a fair number of good and bad years: and it is believed that in India there is a sort of regularly recurring cycle. It is remarkable that in these provinces, where almost every possible question between landlord and tenant has been raised, we have no decision upon the question whether a ryot, who is not bound by an *express* agreement, can be made liable for the rent of a year which, owing to drought or other cause, produced no crop. The question will be found discussed by Mr. Chancellor Kent, at III Commentaries 602, Referring to the cases of *Hare* v. *Grove*, and *Holtzapfell* v. *Baker*, he says:—"In both of these cases the Court of Equity refused to interfere in favour of the tenant, who was considered as having no equity against the effect of his own express agreement to pay the rent. The same rule prevails equally in England and in this country (America) in the case of an express covenant to pay rent: but it is understood that, by the Civil Law, the prætor would exempt the tenant from paying the rent, or modify the obligation according to equity, when the property was destroyed by fire, inundation, or violence, or the crops failed by a bad season" Sir Barnes Peacock applied the principle where part of the land was lost by diluvion—it is equally applicable to loss of crops by causes over which the tenant has no control, unless there be an express contract or the rents have been calculated on an average of years.

of the tithe of a parish or district for seven years ending on Christmas Day, 1835. (2) Apportion the amount of that value upon the lands of the several tithe-payers. (3) Ascertain how much corn could be purchased with such amount; one-third of it to be laid out in wheat, one-third in barley, and one-third in oats at the average price ascertained by the weekly official returns of the price of corn for the seven years preceding 1835. (4) In every future year, make payable the *price* of the same quantity of wheat, barley and oats at their average prices, founded on a like calculation of the official returns for the seven years ending at each preceding Christmas. These official returns are, it may be mentioned, published in the *London Gazette* in January of every year, and show the average price of wheat, barley and oats for the preceding seven years.



How this principle might be applied to money-rents in Bengal.

In applying this principle to money-rents in Bengal, we would not have to go through all the processes required by the above four rules. Let us suppose that the rent of a ryot's holding is Rs. 20, and that the price of paddy in 1870 is Re. 1 per maund. The money-rent thus represents 20 maunds of paddy. Let us then suppose that the price of paddy steadily rises during the ten years from 1870 to 1880. To simplify the calculation for the purpose of illustration, we shall suppose the price to rise one anna per maund each year. We shall then get the following :—

	Rs.	A.
For 1871 twenty maunds of paddy at Rs. 1-1 give a rent of ...	21	4
„ 1872 „ „ „ „ 1-2 „ „ ...	22	8
„ 1873 „ „ „ „ 1-3 „ „ ...	23	12
„ 1874 „ „ „ „ 1-4 „ „ ...	25	0
„ 1875 „ „ „ „ 1-5 „ „ ...	26	4
„ 1876 „ „ „ „ 1-6 „ „ ...	27	8
„ 1877 „ „ „ „ 1-7 „ „ ...	28	12
„ 1878 „ „ „ „ 1-8 „ „ ...	30	0
„ 1879 „ „ „ „ 1-9 „ „ ...	31	4
„ 1880 „ „ „ „ 1-10 „ „ ...	32	8
Total rent of ten years ...	268	12

This gives an annual average of Rs. 26-14, to which the rent may be enhanced.

The only thing necessary in order to the application of this principle to the enhancement of existing rents at decennial intervals is to ascertain the average yearly price of paddy: and this might be done yearly by the Collector of each district, either for the whole district or for divisions thereof, between which such a difference may exist as to render a general price-rate inequitable. Trade and the means of communication are not sufficiently far advanced to admit of a general price-rate for all Bengal. The Collector might give due notice of the average price which he proposed to adopt, and persons concerned therein might be allowed a month to object and show a more correct average. The Commissioner and the Board of Revenue might have a power of revision: and the average prices for all districts should be finally published in the *Gazette*. The selection of the staple crop or crops to be used for the calculation, and the alteration of the staples from time to time would naturally be vested in the Revenue Authorities. The period after which revision should take place might, at first starting, be made three or five years; and it might be possible to obtain prices for a few back years so as to bring the rule more quickly into operation. In the illustration I have taken the price of paddy as Re. 1 a maund in 1870; but of course the price, with which the rule should be started, ought to be ascertained upon an average of a certain number of years. The great advantage of this principle would be that it would not interfere with existing relations; and therefore its introduction would not stir up a vast mass of litigation, disturbing men's minds and exciting their bad passions. It would, moreover, be gradual in its operation, giving full scope to the operation of a rule carefully followed in Settlement Proceedings, and founded on the equitable considerations to which I have already adverted—the rule, namely, that forbids too sudden a rise, as likely to involve, if not ruin, men to whom sufficient time is not allowed to adjust their circumstances to their diminished powers of expenditure. It will be understood that the principle, of which I am here speaking, applies only to

enhancement based upon an increase in the value of the produce, a rise of the price of produce due to the operation of *general* causes. It would not interfere with or supplant the present first and third grounds of enhancement (*ante* p. 233) or the remaining portions of the second ground, as to which some observations have been made above (*ante* pp. 235-238). If it were thought advisable to convert the rents paid in kind in Behar into money-rents, the same rule could be applied, only in this case a preliminary step would be necessary, viz. to fix the money-rent, which is the first factor in the calculation, by ascertaining upon an average of a certain number of years the value of the produce delivered as rent.

Principle applies only to enhancement based upon a rise of price due to general causes.

In concluding this, as in concluding the previous Note, I desire to say that I sum up in favour of no particular conclusion. I advocate no remedy especially. I have merely put forward one possible way of looking at a portion of the history of the question, and have endeavoured to collect some details of what has been done or proposed to be done, with the view of assisting future deliberation. If there is anything in this paper, to the absolute accuracy of which some will not be prepared to assent, I can only say that in dealing with a difficult subject, I have endeavoured to be accurate and that I shall be grateful for any assistance which will enable me to be more so.

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